

TABLE II—CONTINUED

<i>Title 17 1947 Revision Sections</i>	<i>Title 17 New Sections</i>
18	407, 506
19	401
20	401, 402
21	405
22	601
23	601
24	203, 301 et seq.
25	301 et seq.
26	101
27	109, 202
28	201, 204
29	204
30	205
31	205
32	201
101	412, 501–504
102	Rep. See T. 28 §1338
103	Rep. See F.R. Civ. Proc.
104	110, 506
105	506
106	602
107	602
108	603
109	603
110	Rep. See T. 28 §1338
111	Rep. See T. 28 §1400
112	502
113	502
114	502
115	507
116	505
201	701(a)
202	701(a)
203	708(c)
204	Rep.
205	701(c)
206	701(b)
207	702
208	705
209	407, 410
210	707
211	707
212	705
213	704
214	704
215	708(a), (b)
216	703

PRIOR PROVISIONS

Title 17, as enacted by act July 30, 1947, ch. 391, 61 Stat. 652, consisting of sections 1 to 32, 101 to 116, and 201 to 216, as amended through 1976, and section 203, as amended by Pub. L. 95–94, title IV, §406(a), Aug. 5, 1977, 91 Stat. 682, terminated Jan. 1, 1978.

EFFECTIVE DATE

Section 102 of Pub. L. 94–553, Oct. 19, 1976, 90 Stat. 2598, provided that: “This Act [enacting this title and section 170 of Title 2, The Congress, amending section 131 of Title 2, section 290e of Title 15, Commerce and Trade, section 2318 of Title 18, Crimes and Criminal Procedure, section 543 of Title 26, Internal Revenue Code, section 1498 of Title 28, Judiciary and Judicial Procedure, sections 3203 and 3206 of Title 39, Postal Service, and sections 505 and 2117 of Title 44, Public Printing and Documents, and enacting provisions set out as notes below and under sections 104, 115, 304, 401, 407, 410, and 501 of this title] becomes effective on January 1, 1978, except as otherwise expressly provided by this Act, including provisions of the first section of this Act. The provisions of sections 118, 304(b), and chapter 8 of title 17, as amended by the first section of this Act, take effect upon enactment of this Act [Oct. 19, 1976].”

SEPARABILITY

Section 115 of Pub. L. 94–553, Oct. 19, 1976, 90 Stat. 2602, provided that: “If any provision of title 17 [this title], as amended by the first section of this Act, is declared unconstitutional, the validity of the remainder of this title is not affected.”

AUTHORIZATION OF APPROPRIATIONS

Section 114 of Pub. L. 94–553, Oct. 19, 1976, 90 Stat. 2602, provided that: “There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act [this title].”

LOST AND EXPIRED COPYRIGHTS; RECORDING RIGHTS

Section 103 of Pub. L. 94–553, Oct. 19, 1976, 90 Stat. 2599, provided that: “This Act [enacting this title] does not provide copyright protection for any work that goes into the public domain before January 1, 1978. The exclusive rights, as provided by section 106 of title 17 as amended by the first section of this Act, to reproduce a work in phonorecords and to distribute phonorecords of the work, do not extend to any nondramatic musical work copyrighted before July 1, 1909.”

CROSS REFERENCES

Exclusive jurisdiction of Federal courts over actions and proceedings under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Power of the Congress to regulate copyrights, see Const., Art. I, §8, cl. 8.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 section 179p; title 11 section 101; title 18 sections 2319, 2319A; title 19 section 1337; title 20 sections 1125a, 6622, 8673; title 26 section 543; title 47 sections 542, 544, 605.

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

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|--------|--|
| Sec. | |
| 101. | Definitions. |
| 102. | Subject matter of copyright: In general. |
| 103. | Subject matter of copyright: Compilations and derivative works. |
| 104. | Subject matter of copyright: National origin. |
| 104A. | Copyright in restored works. |
| 105. | Subject matter of copyright: United States Government works. |
| 106. | Exclusive rights in copyrighted works. |
| 106A. | Rights of certain authors to attribution and integrity. |
| 107. | Limitations on exclusive rights: Fair use. |
| 108. | Limitations on exclusive rights: Reproduction by libraries and archives. |
| 109. | Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord. |
| 110. | Limitations on exclusive rights: Exemption of certain performances and displays. |
| 111. | Limitations on exclusive rights: Secondary transmissions. |
| 112. | Limitations on exclusive rights: Ephemeral recordings. |
| 113. | Scope of exclusive rights in pictorial, graphic, and sculptural works. |
| 114. | Scope of exclusive rights in sound recordings. |
| 115. | Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords. |
| 116. | Negotiated licenses for public performances by means of coin-operated phonorecord players. |
| [116A. | Renumbered.] |
| 117. | Limitations on exclusive rights: Computer programs. |
| 118. | Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting. |
| 119. | Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing. |
| 120. | Scope of exclusive rights in architectural works. |
| 121. | Limitations on exclusive rights: reproduction for blind or other people with disabilities. |

AMENDMENTS

1997—Pub. L. 105–80, §12(a)(2), Nov. 13, 1997, 111 Stat. 1534, substituted “Limitations on exclusive rights: Computer programs” for “Scope of exclusive rights: Use in conjunction with computers and similar information systems” in item 117.

1996—Pub. L. 104-197, title III, §316(b), Sept. 16, 1996, 110 Stat. 2417, added item 121.

1994—Pub. L. 103-465, title V, §514(c), Dec. 8, 1994, 108 Stat. 4981, substituted “Copyright in restored works” for “Copyright in certain motion pictures” in item 104A.

1993—Pub. L. 103-198, §3(a), (b)(2), Dec. 17, 1993, 107 Stat. 2309, renumbered item 116A as 116 and struck out former item 116 “Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.”

Pub. L. 103-182, title III, §334(b), Dec. 8, 1993, 107 Stat. 2115, added item 104A.

1990—Pub. L. 101-650, title VI, §603(b), title VII, §704(b)(1), Dec. 1, 1990, 104 Stat. 5130, 5134, added items 106A and 120.

1988—Pub. L. 100-667, title II, §202(6), Nov. 16, 1988, 102 Stat. 3958, added item 119.

Pub. L. 100-568, §4(b)(2), Oct. 31, 1988, 102 Stat. 2857, substituted “Compulsory licenses for public performances” for “Public performances” in item 116 and added item 116A.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An “anonymous work” is a work on the copies or phonorecords of which no natural person is identified as author.

An “architectural work” is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The “Berne Convention” is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

The “best edition” of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person’s “children” are that person’s immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting

work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

For purposes of section 411, a work is a “United States work” only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other non-analog format.

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is—

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;
- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

“Motion pictures” are audiovisual works consisting of a series of related images which,

when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

A “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display

of a work does not of itself constitute publication.

“Registration”, for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e), means a registration of a claim in the original or the renewed and extended term of copyright.

To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

“State” includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A “transfer of copyright ownership” is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A “transmission program” is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A “treaty party” is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The “United States”, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a “useful article”.

The author’s “widow” or “widower” is the author’s surviving spouse under the law of the author’s domicile at the time of his or her death, whether or not the spouse has later remarried.

A “work of visual art” is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person’s official duties.

A “work made for hire” is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2541; Pub. L. 96-517, § 10(a), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 100-568, § 4(a)(1), Oct. 31, 1988, 102 Stat. 2854; Pub. L. 101-650, title VI, § 602, title VII, § 702, Dec. 1, 1990, 104 Stat. 5128, 5133; Pub. L. 102-307, title I, § 102(b)(2), June 26, 1992, 106 Stat. 266; Pub. L. 102-563, § 3(b), Oct. 28, 1992, 106 Stat. 4248; Pub. L. 104-39, § 5(a), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105-80, § 12(a)(3), Nov. 13, 1997, 111 Stat. 1534; Pub. L. 105-147, § 2(a), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 105-298, title II, § 205, Oct. 27, 1998, 112 Stat. 2833; Pub. L. 105-304, title I, § 102(a), Oct. 28, 1998, 112 Stat. 2861.)

AMENDMENT OF SECTION

Pub. L. 105-304, title I, §§ 102(a)(6), 105(b)(1)(B), Oct. 28, 1998, 112 Stat. 2861, 2877, provided that, effective upon the entry into force of the WIPO Copyright Treaty with respect to the United States, this section is amended by inserting after the definition of “widow” the following:

The “WIPO Copyright Treaty” is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.

Pub. L. 105-304, title I, §§ 102(a)(7), 105(b)(2)(B), Oct. 28, 1998, 112 Stat. 2862, 2877, provided that, effective upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, this section is amended by inserting after the definition of “The ‘WIPO Copyright Treaty’” the following:

The “WIPO Performances and Phonograms Treaty” is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The significant definitions in this section will be mentioned or summarized in connection with the provisions to which they are most relevant.

REFERENCES IN TEXT

The Universal Copyright Convention, referred to in definition of “international agreement”, is set out under section 104 of this title.

Section 2 of the Uruguay Round Agreements Act, referred to in definitions of “WTO Agreement” and “WTO member country”, is classified to section 3501 of Title 19, Customs Duties.

AMENDMENTS

1998—Pub. L. 105-304, § 102(a)(1), struck out definition of “Berne Convention work”.

Pub. L. 105-304, § 102(a)(2), in definition of “country of origin”, substituted “For purposes of section 411, a work is a ‘United States work’ only if” for “The ‘country of origin’ of a Berne Convention work, for purposes of section 411, is the United States if” in introductory provisions, substituted “treaty party or parties” for “nation or nations adhering to the Berne Convention” in par. (1)(B) and “is not a treaty party” for “does not adhere to the Berne Convention” in par. (1)(C), (D), and struck out at end “For the purposes of section 411, the ‘country of origin’ of any other Berne Convention work is not the United States.”

Pub. L. 105-298, § 205(1), inserted definitions of “establishment” and “food service or drinking establishment”.

Pub. L. 105-304, § 102(a)(3), inserted definition of “Geneva Phonograms Convention”.

Pub. L. 105-298, § 205(2), inserted definition of “gross square feet of space”.

Pub. L. 105-304, § 102(a)(4), inserted definition of “international agreement”.

Pub. L. 105-298, § 205(3), (4), inserted definitions of “performing rights society” and “proprietor”.

Pub. L. 105-304, § 102(a)(5), (8), inserted definitions of “treaty party”, “WTO Agreement”, and “WTO member country”.

1997—Pub. L. 105-147 inserted definition of “financial gain”.

Pub. L. 105-80, in definition of to perform or to display a work “publicly”, substituted “process” for “processes” in par. (2).

1995—Pub. L. 104-39 inserted definition of “digital transmission”.

1992—Pub. L. 102-563 substituted “Except as otherwise provided in this title, as used” for “As used” in introductory provisions.

Pub. L. 102-307 inserted definition of “registration”.

1990—Pub. L. 101-650, § 702(a), inserted definition of “architectural work”.

Pub. L. 101-650, § 702(b), in definition of “Berne Convention work” added par. (5).

Pub. L. 101-650, § 602, inserted definition of “work of visual art”.

1988—Pub. L. 100-568, § 4(a)(1)(B), inserted definitions of “The Berne Convention” and “Berne Convention work”.

Pub. L. 100-568, § 4(a)(1)(C), inserted definition of “country of origin”.

Pub. L. 100-568, § 4(a)(1)(A), in definition of “Pictorial, graphic, and sculptural works” substituted “diagrams, models, and technical drawings, including architectural plans” for “technical drawings, diagrams, and models”.

1980—Pub. L. 96-517 inserted definition of “computer program”.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-304, title I, § 105, Oct. 28, 1998, 112 Stat. 2877, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this title [see section 101 of Pub. L. 105-304, set out as a Short Title of 1998 Amendments note below], this title and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998].

“(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

“(A) Paragraph (5) of the definition of ‘international agreement’ contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

“(B) The amendment made by section 102(a)(6) of this Act [amending this section].

“(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

“(D) Subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

“(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

“(A) Paragraph (6) of the definition of ‘international agreement’ contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

“(B) The amendment made by section 102(a)(7) of this Act [amending this section].

“(C) The amendment made by section 102(b)(2) of this Act [amending section 104 of this title].

“(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

“(E) Subparagraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

“(F) The amendments made by section 102(c)(3) of this Act [amending section 104A of this title].”

Pub. L. 105-298, title II, §207, Oct. 27, 1998, 112 Stat. 2834, provided that: “This title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section] and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act [Oct. 27, 1998].”

EFFECTIVE DATE OF 1995 AMENDMENT

Section 6 of Pub. L. 104-39 provided that: “This Act [see Short Title of 1995 Amendment note below] and the amendments made by this Act shall take effect 3 months after the date of enactment of this Act [Nov. 1, 1995], except that the provisions of sections 114(e) and 114(f) of title 17, United States Code (as added by section 3 of this Act) shall take effect immediately upon the date of enactment of this Act.”

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(g) of Pub. L. 102-307, as amended by Pub. L. 105-298, title I, §102(d)(2)(B), Oct. 27, 1998, 112 Stat. 2828, provided that:

“(1) Subject to paragraphs (2) and (3), this section [amending this section and sections 304, 408, 409, and 708 of this title and enacting provisions set out as a note under section 304 of this title] and the amendments made by this section shall take effect on the date of the enactment of this Act [June 26, 1992].

“(2) The amendments made by this section shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977. Copyrights secured before January 1, 1964, shall be governed by the provisions of section 304(a) of title 17, United States Code, as in effect on the day before the effective date of this section [June 26, 1992], except each reference to forty-seven years in such provisions shall be deemed to be 67 years.

“(3) This section and the amendments made by this section shall not affect any court proceedings pending on the effective date of this section.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 602 of Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

Section 706 of title VII of Pub. L. 101-650 provided that: “The amendments made by this title [enacting section 120 of this title and amending this section and sections 102, 106, and 301 of this title], apply to—

“(1) any architectural work created on or after the date of the enactment of this Act [Dec. 1, 1990]; and

“(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 13 of Pub. L. 100-568 provided that:

“(a) EFFECTIVE DATE.—This Act and the amendments made by this Act [enacting section 116A of this title, amending this section and sections 104, 116, 205, 301, 401 to 408, 411, 501, 504, 801, and 804 of this title, and enacting provisions set out as notes under this section] take effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States [Mar. 1, 1989]. [The Berne Convention entered into force with respect to the United States on Mar. 1, 1989.]

“(b) EFFECT ON PENDING CASES.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.”

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105-304, §1, Oct. 28, 1998, 112 Stat. 2860, provided that: “This Act [enacting section 512 and chapters 12 and 13 of this title and section 4001 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 104, 104A, 108, 112, 114, 117, 411, 507, 701, and 801 to 803 of this title, section 5314 of Title 5, Government Organization and Employees, sections 1338, 1400, and 1498 of Title 28, and section 3 of Title 35, Patents, and enacting provisions set out as notes under this section and sections 108, 109, 112, 114, 512, and 1301 of this title] may be cited as the ‘Digital Millennium Copyright Act’.”

Pub. L. 105-304, title I, §101, Oct. 28, 1998, 112 Stat. 2861, provided that: “This title [enacting chapter 12 of this title, amending this section and sections 104, 104A, 411, and 507 of this title, and enacting provisions set out as notes under this section and section 109 of this title] may be cited as the ‘WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998’.”

Pub. L. 105-304, title II, §201, Oct. 28, 1998, 112 Stat. 2877, provided that: “This title [enacting section 512 of this title and provisions set out as a note under section 512 of this title] may be cited as the ‘Online Copyright Infringement Liability Limitation Act’.”

Pub. L. 105-304, title III, §301, Oct. 28, 1998, 112 Stat. 2886, provided that: “This title [amending section 117 of this title] may be cited as the ‘Computer Maintenance Competition Assurance Act’.”

Pub. L. 105-304, title V, §501, Oct. 28, 1998, 112 Stat. 2905, provided that: “This Act [probably means ‘this title’], enacting chapter 13 of this title and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure] may be referred to as the ‘Vessel Hull Design Protection Act’.”

Pub. L. 105-298, title I, §101, Oct. 27, 1998, 112 Stat. 2827, provided that: “This title [amending sections 108, 203, and 301 to 304 of this title, enacting provisions set out as a note under section 108 of this title, and amending provisions set out as notes under this section and section 304 of this title] may be referred to as the ‘Sonny Bono Copyright Term Extension Act’.”

Pub. L. 105-298, title II, §201, Oct. 27, 1998, 112 Stat. 2830, provided that: “This title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Fairness In Music Licensing Act of 1998’.”

SHORT TITLE OF 1995 AMENDMENT

Section 1 of Pub. L. 104-39 provided that: “This Act [amending this section and sections 106, 111, 114, 115, 119, and 801 to 803 of this title and enacting provisions set out as a note above] may be cited as the ‘Digital Performance Right in Sound Recordings Act of 1995’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-369, §1, Oct. 18, 1994, 108 Stat. 3477, provided that: “This Act [amending sections 111 and 119 of this title and enacting and repealing provisions set out as notes under section 119 of this title] may be cited as the ‘Satellite Home Viewer Act of 1994’.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-198, §1, Dec. 17, 1993, 107 Stat. 2304, provided that: “This Act [amending sections 111, 116, 118, 119, 801 to 803, 1004 to 1007, and 1010 of this title and section 1288 of Title 8, Aliens and Nationality, renumbering sections 116A and 804 of this title as sections 116 and 803, respectively, of this title, repealing sections 116, 803, and 805 to 810 of this title, and enacting provisions set out as notes under section 801 of this title and section 1288 of Title 8] may be cited as the ‘Copyright Royalty Tribunal Reform Act of 1993’.”

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102-307 provided that: “This Act [enacting sections 179 to 179k of Title 2, The Congress,

amending this section and sections 108, 304, 408, 409, and 708 of this title, repealing sections 178 to 1787 of Title 2, enacting provisions set out as notes under this section, section 304 of this title, and section 179 of Title 2, and repealing provisions set out as a note under section 178 of Title 2] may be cited as the ‘Copyright Amendments Act of 1992’.”

Section 101 of title I of Pub. L. 102-307 provided that: “This title [amending this section and sections 304, 408, 409, and 708 of this title and enacting provisions set out as notes under this section and section 304 of this title] may be referred to as the ‘Copyright Renewal Act of 1992’.”

SHORT TITLE OF 1990 AMENDMENTS

Section 601 of title VI of Pub. L. 101-650 provided that: “This title [enacting section 106A of this title, amending this section and sections 107, 113, 301, 411, 412, 501, and 506 of this title, and enacting provisions set out as notes under this section and section 106A of this title] may be cited as the ‘Visual Artists Rights Act of 1990’.”

Section 701 of title VII of Pub. L. 101-650 provided that: “This title [enacting section 120 of this title, amending this section and sections 102, 106, and 301 of this title, and enacting provisions set out as a note above] may be cited as the ‘Architectural Works Copyright Protection Act’.”

Section 801 of title VIII of Pub. L. 101-650 provided that: “This title [amending section 109 of this title and enacting provisions set out as notes under sections 109 and 205 of this title] may be cited as the ‘Computer Software Rental Amendments Act of 1990’.”

Pub. L. 101-553, §1, Nov. 15, 1990, 104 Stat. 2749, provided that: “This Act [enacting section 511 of this title, amending sections 501, 910, and 911 of this title, and enacting provisions set out as a note under section 501 of this title] may be cited as the ‘Copyright Remedy Clarification Act’.”

Pub. L. 101-319, §1, July 3, 1990, 104 Stat. 290, provided that: “This Act [amending sections 701 and 802 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 701 of this title] may be cited as the ‘Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989’.”

Pub. L. 101-318, §1, July 3, 1990, 104 Stat. 287, provided that: “This Act [amending sections 106, 111, 704, 708, 801, and 804 of this title and enacting provisions set out as notes under sections 106, 111, 708, and 804 of this title] may be cited as the ‘Copyright Fees and Technical Amendments Act of 1989’.”

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100-667, title II, §201, Nov. 16, 1988, 102 Stat. 3949, provided that: “This title [enacting section 119 of this title and sections 612 and 613 of Title 47, Telecommunications, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under section 119 of this title] may be cited as the ‘Satellite Home Viewer Act of 1988’.” [Section ceases to be effective Dec. 31, 1994, see section 207 of Pub. L. 100-667, set out as an Effective and Termination Dates note under section 119 of this title.]

Section 1(a) of Pub. L. 100-568 provided that: “This Act [enacting section 116A of this title, amending this section and sections 104, 116, 205, 301, 401 to 408, 411, 501, 504, 801, and 804 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Berne Convention Implementation Act of 1988’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-450, §1, Oct. 4, 1984, 98 Stat. 1727, provided that: “This Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 109 of this title] may be cited as the ‘Record Rental Amendment of 1984’.”

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105-298, title II, §206, Oct. 27, 1998, 112 Stat. 2834, provided that: “Except as otherwise provided in this title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section], nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this Act [Oct. 27, 1998], as it may be amended after such date, or as it may be issued or agreed to after such date.”

FIRST AMENDMENT APPLICATION

Section 609 of title VI of Pub. L. 101-650 provided that: “This title [see Short Title of 1990 Amendments note above] does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the United States Constitution.”

BERNE CONVENTION; CONGRESSIONAL DECLARATIONS

Section 2 of Pub. L. 100-568 provided that: “The Congress makes the following declarations:

“(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act [see Short Title of 1988 Amendment note above] referred to as the ‘Berne Convention’) are not self-executing under the Constitution and laws of the United States.

“(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

“(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act [Oct. 31, 1988], satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.”

BERNE CONVENTION; CONSTRUCTION

Section 3 of Pub. L. 100-568 provided that:

“(a) RELATIONSHIP WITH DOMESTIC LAW.—The provisions of the Berne Convention—

“(1) shall be given effect under title 17, as amended by this Act [see Short Title of 1988 Amendment note above], and any other relevant provision of Federal or State law, including the common law; and

“(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

“(b) CERTAIN RIGHTS NOT AFFECTED.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

“(1) to claim authorship of the work; or

“(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author’s honor or reputation.”

WORKS IN PUBLIC DOMAIN WITHOUT COPYRIGHT PROTECTION

Section 12 of Pub. L. 100-568 provided that: “Title 17, United States Code, as amended by this Act [see Short Title of 1988 Amendment note above], does not provide copyright protection for any work that is in the public domain in the United States.”

DEFINITIONS

Pub. L. 103-465, title V, §501, Dec. 8, 1994, 108 Stat. 4973, provided that: “For purposes of this title [enacting section 1101 of this title and section 2319A of Title

18, Crimes and Criminal Procedure, amending sections 104A and 109 of this title, sections 1052 and 1127 of Title 15, Commerce and Trade, and sections 41, 104, 111, 119, 154, 156, 172, 173, 252, 262, 271, 272, 287, 292, 295, 307, 365, and 373 of Title 35, Patents, enacting provisions set out as notes under section 1052 of Title 15 and sections 104 and 154 of Title 35, and amending provisions set out as a note under section 109 of this title—

“(1) the term ‘WTO Agreement’ has the meaning given that term in section 2(9) of the Uruguay Round Agreements Act [19 U.S.C. 3501(9)]; and

“(2) the term ‘WTO member country’ has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106A, 114 of this title; title 2 section 179u; title 18 sections 2318, 2319; title 28 section 4001.

§ 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2544; Pub. L. 101-650, title VII, § 703, Dec. 1, 1990, 104 Stat. 5133.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Original Works of Authorship. The two fundamental criteria of copyright protection—originality and fixation in tangible form are restated in the first sentence of this cornerstone provision. The phrase “original works or authorship,” which is purposely left undefined, is intended to incorporate without change the standard of originality established by the courts under the present copyright statute. This standard does not include requirements of novelty, ingenuity, or esthetic merit, and there is no intention to enlarge the standard of copyright protection to require them.

In using the phrase “original works of authorship,” rather than “all the writings of an author” now in section 4 of the statute [section 4 of former title 17], the committee’s purpose is to avoid exhausting the constitutional power of Congress to legislate in this field, and to eliminate the uncertainties arising from the latter phrase. Since the present statutory language is substantially the same as the empowering language of the Constitution [Const. Art. I, § 8, cl. 8], a recurring question has been whether the statutory and the constitu-

tional provisions are coextensive. If so, the courts would be faced with the alternative of holding copyrightable something that Congress clearly did not intend to protect, or of holding constitutionally incapable of copyright something that Congress might one day want to protect. To avoid these equally undesirable results, the courts have indicated that “all the writings of an author” under the present statute is narrower in scope than the “writings” of “authors” referred to in the Constitution. The bill avoids this dilemma by using a different phrase—“original works of authorship”—in characterizing the general subject matter of statutory copyright protection.

The history of copyright law has been one of gradual expansion in the types of works accorded protection, and the subject matter affected by this expansion has fallen into two general categories. In the first, scientific discoveries and technological developments have made possible new forms of creative expression that never existed before. In some of these cases the new expressive forms—electronic music, filmstrips, and computer programs, for example—could be regarded as an extension of copyrightable subject matter Congress had already intended to protect, and were thus considered copyrightable from the outset without the need of new legislation. In other cases, such as photographs, sound recordings, and motion pictures, statutory enactment was deemed necessary to give them full recognition as copyrightable works.

Authors are continually finding new ways of expressing themselves, but it is impossible to foresee the forms that these new expressive methods will take. The bill does not intend either to freeze the scope of copyrightable subject matter at the present stage of communications technology or to allow unlimited expansion into areas completely outside the present congressional intent. Section 102 implies neither that that subject matter is unlimited nor that new forms of expression within that general area of subject matter would necessarily be unprotected.

The historic expansion of copyright has also applied to forms of expression which, although in existence for generations or centuries, have only gradually come to be recognized as creative and worthy of protection. The first copyright statute in this country, enacted in 1790, designated only “maps, charts, and books”; major forms of expression such as music, drama, and works of art achieved specific statutory recognition only in later enactments. Although the coverage of the present statute is very broad, and would be broadened further by the explicit recognition of all forms of choreography, there are unquestionably other areas of existing subject matter that this bill does not propose to protect but that future Congresses may want to.

Under the bill, the concept of fixation is important since it not only determines whether the provisions of the statute apply to a work, but it also represents the dividing line between common law and statutory protection. As will be noted in more detail in connection with section 301, an unfixed work of authorship, such as an improvisation or an unrecorded choreographic work, performance, or broadcast, would continue to be subject to protection under State common law or statute, but would not be eligible for Federal statutory protection under section 102.

The bill seeks to resolve, through the definition of “fixation” in section 101, the status of live broadcasts—sports, news coverage, live performances of music, etc.—that are reaching the public in unfixed form but that are simultaneously being recorded. When a football game is being covered by four television cameras, with a director guiding the activities of the four cameramen and choosing which of their electronic images are sent out to the public and in what order, there is little doubt that what the cameramen and the director are doing constitutes “authorship.” The further question to be considered is whether there has been a fixation. If the images and sounds to be broadcast are first recorded (on a video tape, film, etc.) and then transmitted, the recorded work would be considered a “motion

picture" subject to statutory protection against unauthorized reproduction or retransmission of the broadcast. If the program content is transmitted live to the public while being recorded at the same time, the case would be treated the same; the copyright owner would not be forced to rely on common law rather than statutory rights in proceeding against an infringing user of the live broadcast.

Thus, assuming it is copyrightable—as a "motion picture" or "sound recording," for example—the content of a live transmission should be regarded as fixed and should be accorded statutory protection if it is being recorded simultaneously with its transmission. On the other hand, the definition of "fixation" would exclude from the concept purely evanescent or transient reproductions such as those projected briefly on a screen, shown electronically on a television or other cathode ray tube, or captured momentarily in the "memory" of a computer.

Under the first sentence of the definition of "fixed" in section 101, a work would be considered "fixed in a tangible medium of expression" if there has been an authorized embodiment in a copy or phonorecord and if that embodiment "is sufficiently permanent or stable" to permit the work "to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." The second sentence makes clear that, in the case of "a work consisting of sounds, images, or both, that are being transmitted," the work is regarded as "fixed" if a fixation is being made at the same time as the transmission.

Under this definition "copies" and "phonorecords" together will comprise all of the material objects in which copyrightable works are capable of being fixed. The definitions of these terms in section 101, together with their usage in section 102 and throughout the bill, reflect a fundamental distinction between the "original work" which is the product of "authorship" and the multitude of material objects in which it can be embodied. Thus, in the sense of the bill, a "book" is not a work of authorship, but is a particular kind of "copy." Instead, the author may write a "literary work," which in turn can be embodied in a wide range of "copies" and "phonorecords," including books, periodicals, computer punch cards, microfilm, tape recordings, and so forth. It is possible to have an "original work of authorship" without having a "copy" or "phonorecord" embodying it, and it is also possible to have a "copy" or "phonorecord" embodying something that does not qualify as an "original work of authorship." The two essential elements—original work and tangible object—must merge through fixation in order to produce subject matter copyrightable under the statute.

Categories of Copyrightable Works. The second sentence of section 102 lists seven broad categories which the concept of "works of authorship" is said to "include". The use of the word "include," as defined in section 101, makes clear that the listing is "illustrative and not limitative," and that the seven categories do not necessarily exhaust the scope of "original works of authorship" that the bill is intended to protect. Rather, the list sets out the general area of copyrightable subject matter, but with sufficient flexibility to free the courts from rigid or outmoded concepts of the scope of particular categories. The items are also overlapping in the sense that a work falling within one class may encompass works coming within some or all of the other categories. In the aggregate, the list covers all classes of works now specified in section 5 of title 17 [section 5 of former title 17]; in addition, it specifically enumerates "pantomimes and choreographic works".

Of the seven items listed, four are defined in section 101. The three undefined categories—"musical works," "dramatic works," and "pantomimes and choreographic works"—have fairly settled meanings. There is no need, for example, to specify the copyrightability of electronic or concrete music in the statute since the form of a work would no longer be of any importance, nor is it necessary to specify that "choreographic

works" do not include social dance steps and simple routines.

The four items defined in section 101 are "literary works," "pictorial, graphic, and sculptural works," "motion pictures and audiovisual works", and "sound recordings". In each of these cases, definitions are needed not only because the meaning of the term itself is unsettled but also because the distinction between "work" and "material object" requires clarification. The term "literary works" does not connote any criterion of literary merit or qualitative value: it includes catalogs, directories, and similar factual, reference, or instructional works and compilations of data. It also includes computer data bases, and computer programs to the extent that they incorporate authorship in the programmer's expression of original ideas, as distinguished from the ideas themselves.

Correspondingly, the definition of "pictorial, graphic, and sculptural works" carries with it no implied criterion of artistic taste, aesthetic value, or intrinsic quality. The term is intended to comprise not only "works of art" in the traditional sense but also works of graphic art and illustration, art reproductions, plans and drawings, photographs and reproductions of them, maps, charts, globes, and other cartographic works, works of these kinds intended for use in advertising and commerce, and works of "applied art." There is no intention whatever to narrow the scope of the subject matter now characterized in section 5(k) [section 5(k) of former title 17] as "prints or labels used for articles of merchandise." However, since this terminology suggests the material object in which a work is embodied rather than the work itself, the bill does not mention this category separately.

In accordance with the Supreme Court's decision in *Mazer v. Stein*, 347 U.S. 201 (1954) [74 S.Ct. 460, 98 L. Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 949, 98 L.Ed. 1096], works of "applied art" encompass all original pictorial, graphic, and sculptural works that are intended to be or have been embodied in useful articles, regardless of factors such as mass production, commercial exploitation, and the potential availability of design patent protection. The scope of exclusive rights in these works is given special treatment in section 113, to be discussed below.

The Committee has added language to the definition of "pictorial, graphic, and sculptural works" in an effort to make clearer the distinction between works of applied art protectable under the bill and industrial designs not subject to copyright protection. The declaration that "pictorial, graphic, and sculptural works" include "works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned" is classic language; it is drawn from Copyright Office regulations promulgated in the 1940's and expressly endorsed by the Supreme Court in the *Mazer* case.

The second part of the amendment states that "the design of a useful article * * * shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." A "useful article" is defined as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." This part of the amendment is an adaptation of language added to the Copyright Office Regulations in the mid-1950's in an effort to implement the Supreme Court's decision in the *Mazer* case.

In adopting this amendatory language, the Committee is seeking to draw as clear a line as possible between copyrightable works of applied art and uncopyrighted works of industrial design. A two-dimensional painting, drawing, or graphic work is still capable of being identified as such when it is printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like. The same is true when a statue or carving is used to embellish an industrial product

or, as in the *Mazer* case, is incorporated into a product without losing its ability to exist independently as a work of art. On the other hand, although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, ladies' dress, food processor, television set, or any other industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from "the utilitarian aspects of the article" does not depend upon the nature of the design—that is, even if the appearance of an article is determined by aesthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element, and would not cover the over-all configuration of the utilitarian article as such.

A special situation is presented by architectural works. An architect's plans and drawings would, of course, be protected by copyright, but the extent to which that protection would extend to the structure depicted would depend on the circumstances. Purely nonfunctional or monumental structures would be subject to full copyright protection under the bill, and the same would be true of artistic sculpture or decorative ornamentation or embellishment added to a structure. On the other hand, where the only elements of shape in an architectural design are conceptually inseparable from the utilitarian aspects of the structure, copyright protection for the design would not be available.

The Committee has considered, but chosen to defer, the possibility of protecting the design of typefaces. A "typeface" can be defined as a set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a notational system and are intended to be embodied in articles whose intrinsic utilitarian function is for use in composing text or other cognizable combinations of characters. The Committee does not regard the design of typeface, as thus defined, to be a copyrightable "pictorial, graphic, or sculptural work" within the meaning of this bill and the application of the dividing line in section 101.

Enactment of Public Law 92-140 in 1971 [Pub. L. 92-140, Oct. 15, 1971, 85 Stat. 391, which amended sections 1, 5, 19, 20, 26, and 101 of former title 17, and enacted provisions set out as a note under section 1 of former title 17] marked the first recognition in American copyright law of sound recordings as copyrightable works. As defined in section 101, copyrightable "sound recordings" are original works of authorship comprising an aggregate of musical, spoken, or other sounds that have been fixed in tangible form. The copyrightable work comprises the aggregation of sounds and not the tangible medium of fixation. Thus, "sound recordings" as copyrightable subject matter are distinguished from "phonorecords," the latter being physical objects in which sounds are fixed. They are also distinguished from any copyrighted literary, dramatic, or musical works that may be reproduced on a "phonorecord."

As a class of subject matter, sound recordings are clearly within the scope of the "writings of an author" capable of protection under the Constitution [Const. Art. I, § 8, cl. 8], and the extension of limited statutory protection to them was too long delayed. Aside from cases in which sounds are fixed by some purely mechanical means without originality of any kind, the copyright protection that would prevent the reproduction and distribution of unauthorized phonorecords of sound recordings is clearly justified.

The copyrightable elements in a sound recording will usually, though not always, involve "authorship" both on the part of the performers whose performance is cap-

tured and on the part of the record producer responsible for setting up the recording session, capturing and electronically processing the sounds, and compiling and editing them to make the final sound recording. There may, however, be cases where the record producer's contribution is so minimal that the performance is the only copyrightable element in the work, and there may be cases (for example, recordings of birdcalls, sounds of racing cars, et cetera) where only the record producer's contribution is copyrightable.

Sound tracks of motion pictures, long a nebulous area in American copyright law, are specifically included in the definition of "motion pictures," and excluded in the definition of "sound recordings." To be a "motion picture," as defined, requires three elements: (1) a series of images, (2) the capability of showing the images in certain successive order, and (3) an impression of motion when the images are thus shown. Coupled with the basic requirements of original authorship and fixation in tangible form, this definition encompasses a wide range of cinematographic works embodied in films, tapes, video disks, and other media. However, it would not include: (1) unauthorized fixations of live performances or telecasts, (2) live telecasts that are not fixed simultaneously with their transmission, or (3) filmstrips and slide sets which, although consisting of a series of images intended to be shown in succession, are not capable of conveying an impression of motion.

On the other hand, the bill equates audiovisual materials such as filmstrips, slide sets, and sets of transparencies with "motion pictures" rather than with "pictorial, graphic, and sculptural works." Their sequential showing is closer to a "performance" than to a "display," and the definition of "audiovisual works," which applies also to "motion pictures," embraces works consisting of a series of related images that are by their nature, intended for showing by means of projectors or other devices.

Nature of Copyright. Copyright does not preclude others from using the ideas or information revealed by the author's work. It pertains to the literary, musical, graphic, or artistic form in which the author expressed intellectual concepts. Section 102(b) makes clear that copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Some concern has been expressed lest copyright in computer programs should extend protection to the methodology or processes adopted by the programmer, rather than merely to the "writing" expressing his ideas. Section 102(b) is intended, among other things, to make clear that the expression adopted by the programmer is the copyrightable element in a computer program, and that the actual processes or methods embodied in the program are not within the scope of the copyright law.

Section 102(b) in no way enlarges or contracts the scope of copyright protection under the present law. Its purpose is to restate, in the context of the new single Federal system of copyright, that the basic dichotomy between expression and idea remains unchanged.

AMENDMENTS

1990—Subsec. (a)(8). Pub. L. 101-650 added par. (8).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unprotected and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101-650, set out as a note under section 101 of this title.

CROSS REFERENCES

Actions and remedies for infringement of copyright, see section 501 et seq. of this title.
 Common law rights, see section 301 of this title.
 Copyright as distinct from property in object copyrighted, see section 202 of this title.
 Copyright not capital asset, see section 1221 of Title 26, Internal Revenue Code.
 Duration of copyright, see section 301 et seq. of this title.
 Fees, see section 708 of this title.
 Government works as not copyrightable, see section 105 of this title.
 Power of Congress to grant authors exclusive right to their writings, see Const. Art. I, § 8, cl. 8.
 Preemption of other laws that come within subject matter of this section, see section 301 of this title.
 Proclamation by President granting foreign authors copyright protection, see section 104 of this title.
 Regulations, see section 702 of this title.
 Subject matter of copyright—
 Compilations and derivative works, see section 103 of this title.
 National origin, see section 104 of this title.
 United States Government works, see section 105 of this title.
 Transfer and bequests of copyright, see section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 104, 301 of this title; title 19 section 2242.

§ 103. Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2545.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 103 complements section 102: A compilation or derivative work is copyrightable if it represents an “original work of authorship” and falls within one or more of the categories listed in section 102. Read together, the two sections make plain that the criteria of copyrightable subject matter stated in section 102 apply with full force to works that are entirely original and to those containing preexisting material. Section 103(b) is also intended to define, more sharply and clearly than does section 7 of the present law [section 7 of former title 17], the important interrelationship and correlation between protection of preexisting and of “new” material in a particular work. The most important point here is one that is commonly misunderstood today: copyright in a “new version” covers only the material added by the later author, and has no effect one way or the other on the copyright or public domain status of the preexisting material.

Between them the terms “compilations” and “derivative works” which are defined in section 101 comprehend every copyrightable work that employs preexisting material or data of any kind. There is necessarily some overlapping between the two, but they basically represent different concepts. A “compilation” results from a process of selecting, bringing together, organizing, and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright. A “derivative work,” on the other hand, requires a process of recasting, transforming, or adapting “one or more preexisting works”; the “preexisting work” must come within the general subject matter of copyright set forth in section 102, regardless of whether it is or was ever copyrighted.

The second part of the sentence that makes up section 103(a) deals with the status of a compilation or derivative work unlawfully employing preexisting copyrighted material. In providing that protection does not extend to “any part of the work in which such material has been used unlawfully,” the bill prevents an infringer from benefiting, through copyright protection, from committing an unlawful act, but preserves protection for those parts of the work that do not employ the preexisting work. Thus, an unauthorized translation of a novel could not be copyrighted at all, but the owner of copyright in an anthology of poetry could sue someone who infringed the whole anthology, even though the infringer proves that publication of one of the poems was unauthorized. Under this provision, copyright could be obtained as long as the use of the preexisting work was not “unlawful,” even though the consent of the copyright owner had not been obtained. For instance, the unauthorized reproduction of a work might be “lawful” under the doctrine of fair use or an applicable foreign law, and if so the work incorporating it could be copyrighted.

CROSS REFERENCES

Preemption of other laws that come within subject matter of this section, see section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 301 of this title; title 19 section 2242.

§ 104. Subject matter of copyright: National origin

(a) UNPUBLISHED WORKS.—The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) PUBLISHED WORKS.—The works specified by sections 102 and 103, when published, are subject to protection under this title if—

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or

(3) the work is a sound recording that was first fixed in a treaty party; or

(4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

(5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

(c) EFFECT OF BERNE CONVENTION.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2545; Pub. L. 100-568, § 4(a)(2), (3), Oct. 31, 1988, 102 Stat. 2855; Pub. L. 105-304, title I, § 102(b), Oct. 28, 1998, 112 Stat. 2862.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 104 of the bill [this section], which sets forth the basic criteria under which works of foreign origin can be protected under the U.S. copyright law, divides all works coming within the scope of sections 102 and 103 into two categories: unpublished and published. Subsection (a) imposes no qualifications of nationality and domicile with respect to unpublished works. Subsection (b) would make published works subject to protection under any one of four conditions:

- (1) The author is a national or domiciliary of the United States or of a country with which the United States has copyright relations under a treaty, or is a stateless person;
- (2) The work is first published in the United States or in a country that is a party to the Universal Copyright Convention;
- (3) The work is first published by the United Nations, by any of its specialized agencies, or by the Organization of American States; or
- (4) The work is covered by a Presidential proclamation extending protection to works originating in a

specified country which extends protection to U.S. works "on substantially the same basis" as to its own works.

The third of these conditions represents a treaty obligation of the United States. Under the Second Protocol of the Universal Copyright Convention, protection under U.S. Copyright law is expressly required for works published by the United Nations, by U.N. specialized agencies and by the Organization of American States.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-304, § 102(b)(1)(G), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 105-304, § 102(b)(1)(A), substituted "treaty party" for "foreign nation that is a party to a copyright treaty to which the United States is also a party".

Subsec. (b)(2). Pub. L. 105-304, § 102(b)(1)(B), substituted "treaty party" for "party to the Universal Copyright Convention".

Subsec. (b)(3). Pub. L. 105-304, § 102(b)(1)(E), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 105-304, § 102(b)(1)(F), substituted "pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party" for "Berne Convention work".

Subsec. (b)(5), (6). Pub. L. 105-304, § 102(b)(1)(C), (D), redesignated par. (3) as (5) and transferred it to appear after par. (4) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 105-304, § 102(b)(2), added subsec. (d).

1988—Subsec. (b)(4), (5). Pub. L. 100-568, § 4(a)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 100-568, § 4(a)(3), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 105-304 effective Oct. 28, 1998, except as otherwise provided, and amendment by section 102(b)(2) of Pub. L. 105-304 effective upon entry into force of WIPO Performances and Phonograms Treaty with respect to United States, see section 105(a), (b)(2)(C) of Pub. L. 105-304, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

UNIVERSAL COPYRIGHT CONVENTION

PARIS, 1971

The Universal Copyright Convention was revised at Paris on July 24, 1971. It entered into force for the United States on July 10, 1974. The text of the Convention, as revised at Paris, is as follows:

The Contracting States,

Moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have resolved to revise the Universal Copyright Convention as signed at Geneva on 6 September 1952 (hereinafter called "the 1952 Convention"), and consequently,

Have agreed as follows:

ARTICLE I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

ARTICLE II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals, as well as the protection specially granted by this Convention.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

ARTICLE III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV, such State shall not be required to comply with the provisions of paragraph 1 of this Article in respect of the second or any subsequent term of copyright.

ARTICLE IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of Article II and this Article, by the law of the Contracting State in which protection is claimed.

2. (a) The term of protection for works protected under this Convention shall not be less than the life of the author and twenty-five years after his death. How-

ever, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication.

(b) Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.

(c) If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified in subparagraphs (a) and (b).

3. The provisions of paragraph 2 shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. (a) No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

(b) For the purposes of the application of subparagraph (a), if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

ARTICLE IVbis

1. The rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. The provisions of this Article shall extend to works protected under this Convention either in their original form or in any form recognizably derived from the original.

2. However, any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in paragraph 1 of this Article. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

ARTICLE V

1. The rights referred to in Article I shall include the exclusive right of the author to make, publish and authorize the making and publication of translations of works protected under this Convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

(a) If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in a language in general use in the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work into that language and publish the work so translated.

(b) Such national shall in accordance with the procedure of the State concerned, establish either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in a language in general use in the Contracting State are out of print.

(c) If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

(d) Due provision shall be made by domestic legislation to ensure to the owner of the right of translation a compensation which is just and conforms to international standards, to ensure payment and transmittal of such compensation, and to ensure a correct translation of the work.

(e) The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if a language in general use in such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

(f) The licence shall not be granted when the author has withdrawn from circulation all copies of the work.

ARTICLE Vbis

1. Any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may, by a notification deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter called "the Director-General") at the time of its ratification, acceptance or accession or thereafter, avail itself of any or all of the exceptions provided for in Articles Vter and Vquater.

2. Any such notification shall be effective for ten years from the date of coming into force of this Convention, or for such part of that ten-year period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, not more than fifteen or less than three months before the expiration of the relevant ten-year period, the contracting State deposits a further

notification with the Director-General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this Article.

3. Notwithstanding the provisions of paragraph 2, a Contracting State that has ceased to be regarded as a developing country as referred to in paragraph 1 shall no longer be entitled to renew its notification made under the provisions of paragraph 1 or 2, and whether or not it formally withdraws the notification such State shall be precluded from availing itself of the exceptions provided for in Articles Vter and Vquater at the end of the current ten-year period, or at the end of three years after it has ceased to be regarded as a developing country, whichever period expires later.

4. Any copies of a work already made under the exceptions provided for in Articles Vter and Vquater may continue to be distributed after the expiration of the period for which notifications under this Article were effective until their stock is exhausted.

5. Any Contracting State that has deposited a notification in accordance with Article XIII with respect to the application of this Convention to a particular country or territory, the situation of which can be regarded as analogous to that of the States referred to in paragraph 1 of this Article, may also deposit notifications and renew them in accordance with the provisions of this Article with respect to any such country or territory. During the effective period of such notifications, the provisions of Articles Vter and Vquater may be applied with respect to such country or territory. The sending of copies from the country or territory to the Contracting State shall be considered as export within the meaning of Articles Vter and Vquater.

ARTICLE Vter

1. (a) Any Contracting State to which Article Vbis (1) applies may substitute for the period of seven years provided for in Article V(2) a period of three years or any longer period prescribed by its legislation. However, in the case of a translation into a language not in general use in one or more developed countries that are party to this Convention or only the 1952 Convention, the period shall be one year instead of three.

(b) A Contracting State to which Article Vbis (1) applies may, with the unanimous agreement of the developed countries party to this Convention or only the 1952 Convention and in which the same language is in general use, substitute, in the case of translation into that language, for the period of three years provided for in sub-paragraph (a) another period as determined by such agreement but not shorter than one year. However, this sub-paragraph shall not apply where the language in question is English, French or Spanish. Notification of any such agreement shall be made to the Director-General.

(c) The licence may only be granted if the applicant, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the owner of the right of translation, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre which may have been designated in a notification to that effect deposited with the Director-General by the government of the State in which the publisher is believed to have his principal place of business.

(d) If the owner of the right of translation cannot be found, the applicant for a licence shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre as mentioned in sub-paragraph (c). If no such centre is notified he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization.

2. (a) Licences obtainable after three years shall not be granted under this Article until a further period of six months has elapsed and licences obtainable after one year until a further period of nine months has elapsed. The further period shall begin either from the date of the request for permission to translate mentioned in paragraph 1(c) or, if the identity or address of the owner of the right of translation is not known, from the date of dispatch of the copies of the application for a licence mentioned in paragraph 1(d).

(b) Licences shall not be granted if a translation has been published by the owner of the right of translation or with his authorization during the said period of six or nine months.

3. Any licence under this Article shall be granted only for the purpose of teaching, scholarship or research.

4. (a) Any licence granted under this Article shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for.

(b) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State granting the licence. If the writing bears the notice specified in Article III (1) the copies shall bear the same notice.

(c) The prohibition of export provided for in sub-paragraph (a) shall not apply where a governmental or other public entity of a State which has granted a licence under this Article to translate a work into a language other than English, French or Spanish sends copies of a translation prepared under such licence to another country if:

(i) the recipients are individuals who are nationals of the Contracting State granting the licence, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without the object of commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the Contracting State to allow the receipt, distribution or both and the Director-General has been notified of such agreement by any one of the governments which have concluded it.

5. Due provision shall be made at the national level to ensure:

(a) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(b) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

6. Any licence granted by a Contracting State under this Article shall terminate if a translation of the work in the same language with substantially the same content as the edition in respect of which the licence was granted is published in the said State by the owner of the right of translation or with his authorization, at a price reasonably related to that normally charged in the same State for comparable works. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

7. For works which are composed mainly of illustrations a licence to translate the text and to reproduce the illustrations may be granted only if the conditions of Article *Vquater* are also fulfilled.

8. (a) A licence to translate a work protected under this Convention, published in printed or analogous forms of reproduction, may also be granted to a broadcasting organization having its headquarters in a Contracting State to which Article *Vbis* (1) applies, upon an application made in that State by the said organization under the following conditions:

(i) the translation is made from a copy made and acquired in accordance with the laws of the Contracting State;

(ii) the translation is for use only in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes set out in condition (ii), through broadcasts lawfully made which are intended for recipients on the territory of the Contracting State, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) sound or visual recordings of the translation may be exchanged only between broadcasting organizations having their headquarters in the Contracting State granting the licence; and

(v) all uses made of the translation are without any commercial purpose.

(b) Provided all of the criteria and conditions set out in sub-paragraph (a) are met, a licence may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(c) Subject to sub-paragraphs (a) and (b), the other provisions of this Article shall apply to the grant and exercise of the licence.

9. Subject to the provisions of this Article, any licence granted under this Article shall be governed by the provisions of Article V, and shall continue to be governed by the provisions of Article V and of this Article, even after the seven-year period provided for in Article V(2) has expired. However, after the said period has expired, the licensee shall be free to request that the said licence be replaced by a new licence governed exclusively by the provisions of Article V.

ARTICLE *Vquater*

1. Any Contracting State to which Article *Vbis* (1) applies may adopt the following provisions:

(a) If, after the expiration of (i) the relevant period specified in sub-paragraph (c) commencing from the date of first publication of a particular edition of a literary, scientific or artistic work referred to in paragraph 3, or (ii) any longer period determined by national legislation of the State, copies of such edition have not been distributed in that State to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a non-exclusive licence from the competent authority to publish such edition at that or a lower price for use in connexion with systematic instructional activities. The licence may only be granted if such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to publish such work, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre referred to in sub-paragraph (d).

(b) A licence may also be granted on the same conditions if, for a period of six months, no authorized copies of the edition in question have been on sale in the State concerned to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works.

(c) The period referred to in sub-paragraph (a) shall be five years except that:

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(d) If the owner of the right of reproduction cannot be found, the applicant for a licence shall send, by registered air mail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre identified as such in a notification deposited with the Director-General by the State in which the publisher is believed to have his principal place of business. In the absence of any such notification, he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization. The licence shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(e) Licences obtainable after three years shall not be granted under this Article:

(i) until a period of six months has elapsed from the date of the request for permission referred to in subparagraph (a) or, if the identity or address of the owner of the right of reproduction is unknown, from the date of the dispatch of the copies of the application for a licence referred to in subparagraph (d);

(ii) if any such distribution of copies of the edition as is mentioned in subparagraph (a) has taken place during that period.

(f) The name of the author and the title of the particular edition of the work shall be printed on all copies of the published reproduction. The licence shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for. The licence shall not be transferable by the licensee.

(g) Due provision shall be made by domestic legislation to ensure an accurate reproduction of the particular edition in question.

(h) A licence to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization;

(ii) where the translation is not in a language in general use in the State with power to grant the licence.

2. The exceptions provided for in paragraph 1 are subject to the following additional provisions:

(a) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State to which the said licence applies. If the edition bears the notice specified in Article III (1), the copies shall bear the same notice.

(b) Due provision shall be made at the national level to ensure:

(i) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(ii) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(c) Whenever copies of an edition of a work are distributed in the Contracting State to the general public or in connexion with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the State for comparable works, any licence granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the licence. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

(d) No licence shall be granted when the author has withdrawn from circulation all copies of the edition in question.

3. (a) Subject to subparagraph (b), the literary, scientific or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the State with power to grant the license; always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

ARTICLE VI

“Publication”, as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

ARTICLE VII

This Convention shall not apply to works or rights in works which, at the effective date of this Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

ARTICLE VIII

1. This Convention, which shall bear the date of 24 July 1971, shall be deposited with the Director-General and shall remain open for signature by all States party to the 1952 Convention for a period of 120 days after the date of this Convention. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this Convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

ARTICLE IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession.

2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

3. Accession to this Convention by a State not party to the 1952 Convention shall also constitute accession to that Convention; however, if its instrument of accession is deposited before this Convention comes into force, such State may make its accession to the 1952 Convention conditional upon the coming into force of this Convention. After the coming into force of this Convention, no State may accede solely to the 1952 Convention.

4. Relations between States party to this Convention and States that are party only to the 1952 Convention, shall be governed by the 1952 Convention. However, any State party only to the 1952 Convention may, by a notification deposited with the Director-General, declare that it will admit the application of the 1971 Convention to works of its nationals or works first published in its territory by all States party to this Convention.

ARTICLE X

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.

2. It is understood that at the date this Convention comes into force in respect of any State, that State must be in a position under its domestic law to give effect to the terms of this Convention.

ARTICLE XI

1. An Intergovernmental Committee is hereby established with the following duties:

(a) to study the problems concerning the application and operation of the Universal Copyright Convention;

(b) to make preparation for periodic revisions of this Convention;

(c) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;

(d) to inform States party to the Universal Copyright Convention as to its activities.

2. The Committee shall consist of the representatives of eighteen States party to this Convention or only to the 1952 Convention.

3. The Committee shall be selected with due consideration to a fair balance of national interests on the basis of geographical location, population, languages and stage of development.

4. The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director-General of the World Intellectual Property Organization and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

ARTICLE XII

The Intergovernmental Committee shall convene a conference for revision whenever it deems necessary, or at the request of at least ten States party to this Convention.

ARTICLE XIII

1. Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in Article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.

2. However, nothing in this Article shall be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a country or territory to which this Convention is made applicable by another Contracting State in accordance with the provisions of this Article.

ARTICLE XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories with respect to which a notification has been given under Article XIII. The denunciation shall be made by notification addressed to the Director-General. Such denunciation shall also constitute denunciation of the 1952 Convention.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

ARTICLE XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

ARTICLE XVI

1. This Convention shall be established in English, French, and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this Convention shall be established by the Director-General, after consultation with the governments concerned, in Arabic, German, Italian and Portuguese.

3. Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General other texts in the language of its choice by arrangement with the Director-General.

4. All such texts shall be annexed to the signed texts of this Convention.

ARTICLE XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a declaration has been annexed to the present Article. This declaration is an integral part of this Convention for the States bound by the Berne Convention on 1 January 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said declaration, and ratification, acceptance or accession by such States shall include the declaration, as well as this Convention.

ARTICLE XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this Convention comes into force in such State shall not be affected.

ARTICLE XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this Article shall affect the provisions of Articles XVII and XVIII.

ARTICLE XX

Reservations to this Convention shall not be permitted.

ARTICLE XXI

1. The Director-General shall send duly certified copies of this Convention to the States interested and to the Secretary-General of the United Nations for registration by him.

2. He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under this Convention and denunciations under Article XIV.

APPENDIX DECLARATION RELATING TO ARTICLE XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works (hereinafter called "the Berne Union") and which are signatories to this Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the coexistence of the Berne Convention and the Universal Copyright Convention,

Recognizing the temporary need of some States to adjust their level of copyright protection in accordance with their stage of cultural, social and economic development,

Have, by common agreement, accepted the terms of the following declaration:

(a) Except as provided by paragraph (b), works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the Berne Union after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) Where a Contracting State is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, and has deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization, at the time of its withdrawal from the Berne Union, a notification to the effect that it regards itself as a developing country, the provisions of paragraph (a) shall not be applicable as long as such State may avail itself of the exceptions provided for by this Convention in accordance with Article Vbis;

(c) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.

RESOLUTION CONCERNING ARTICLE XI

The Conference for Revision of the Universal Copyright Convention,

Having considered the problems relating to the Intergovernmental Committee provided for in Article XI of this Convention, to which this resolution is annexed,

Resolves that:

1. At its inception, the Committee shall include representatives of the twelve States members of the Intergovernmental Committee established under Article XI of the 1952 Convention and the resolution annexed to it, and, in addition, representatives of the following States: Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia.

2. Any States that are not party to the 1952 Convention and have not acceded to this Convention before the first ordinary session of the Committee following the entry into force of this Convention shall be replaced by other States to be selected by the Committee at its first ordinary session in conformity with the provisions of Article XI (2) and (3).

3. As soon as this Convention comes into force the Committee as provided for in paragraph 1 shall be deemed to be constituted in accordance with Article XI of this Convention.

4. A session of the Committee shall take place within one year after the coming into force of this Convention; thereafter the Committee shall meet in ordinary session at intervals of not more than two years.

5. The Committee shall elect its Chairman and two Vice-Chairmen. It shall establish its Rules of Procedure having regard to the following principles:

(a) The normal duration of the term of office of the members represented on the Committee shall be six years with one-third retiring every two years, it being however, understood that, of the original terms of office, one-third shall expire at the end of the Committee's second ordinary session which will follow the entry into force of this Convention, a further third at the end of its third ordinary session, and the remaining third at the end of its fourth ordinary session.

(b) The rules governing the procedure whereby the Committee shall fill vacancies, the order in which terms of membership expire, eligibility for reelection, and election procedures, shall be based upon a balancing of the needs for continuity of membership and

rotation of representation, as well as the considerations set out in Article XI(3).

Expresses the wish that the United Nations Educational, Scientific and Cultural Organization provide its Secretariat.

In faith whereof the undersigned, having deposited their respective full powers, have signed this Convention.

Done at Paris, this twenty-fourth day of July 1971, in a single copy.

PROTOCOL 1

ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON 24 JULY 1971 CONCERNING THE APPLICATION OF THAT CONVENTION TO WORKS OF STATELESS PERSONS AND REFUGEES

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

1. Stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the 1971 Convention, be assimilated to the nationals of that State.

2. (a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(b) This Protocol shall enter into force in respect of each State, on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

(c) On the entry into force of this Protocol in respect of a State not party to Protocol 1 annexed to the 1952 Convention, the latter Protocol shall be deemed to enter into force in respect of such State.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Paris this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

PROTOCOL 2

ANNEXED TO THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON 24 JULY 1971 CONCERNING THE APPLICATION OF THAT CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

1. (a) The protection provided for in Article II (1) of the 1971 Convention shall apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith, or by the Organization of American States.

(b) Similarly, Article II (2) of the 1971 Convention shall apply to the said organization or agencies.

2. (a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(b) This Protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Paris, this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three

texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

UNIVERSAL COPYRIGHT CONVENTION

GENEVA, 1952

The Unesco Universal Copyright Convention was adopted by the Intergovernmental Copyright Conference at Geneva, Switzerland, on Sept. 6, 1952. It entered into force for the United States on Sept. 16, 1955.

The text of the Convention is as follows: The Contracting States,

Moved by the desire to assure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have agreed as follows:

ARTICLE I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

ARTICLE II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

ARTICLE III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 of this article shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 of this article shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such

as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in article IV, such State shall not be required to comply with the provisions of paragraph 1 of this article III in respect of the second or any subsequent term of copyright.

ARTICLE IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of article II and this article, by the law of the Contracting State in which protection is claimed.

2. The term of protection for works protected under this Convention shall not be less than the life of the author and 25 years after his death.

However, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than 25 years from the date of first publication.

Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than 25 years from the date of first publication or from its registration prior to publication, as the case may be.

If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified above.

3. The provisions of paragraph 2 of this article shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

For the purposes of the application of the preceding provision, if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4 of this article, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4 of this article, in case of simultaneous publication in

two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

ARTICLE V

1. Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in the national language or languages, as the case may be, of the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive license from the competent authority thereof to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if one of the national languages of such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee.

The license shall not be granted when the author has withdrawn from circulation all copies of the work.

ARTICLE VI

“Publication”, as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

ARTICLE VII

This Convention shall not apply to works or rights in works which, at the effective date of the Convention in a Contracting State where protection is claimed, are

permanently in the public domain in the said Contracting State.

ARTICLE VIII

1. This Convention, which shall bear the date of September 6, 1952, shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization and shall remain open for signature by all States for a period of 120 days after that date. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this Convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession, among which there shall be those of four States which are not members of the International Union for the Protection of Literary and Artistic Works.

2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

ARTICLE X

1. Each State party to this Convention undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.

2. It is understood, however, that at the time an instrument of ratification, acceptance or accession is deposited on behalf of any State, such State must be in a position under its domestic law to give effect to the terms of this Convention.

ARTICLE XI

1. An Intergovernmental Committee is hereby established with the following duties:

(a) to study the problems concerning the application and operation of this Convention;

(b) to make preparation for periodic revisions of this Convention;

(c) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;

(d) to inform the Contracting States as to its activities.

2. The Committee shall consist of the representatives of twelve Contracting States to be selected with due consideration to fair geographical representation and in conformity with the Resolution relating to this article, annexed to this Convention.

The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

ARTICLE XII

The Intergovernmental Committee shall convene a conference for revision of this Convention whenever it deems necessary, or at the request of at least ten Contracting States, or of a majority of the Contracting States if there are less than twenty Contracting States.

ARTICLE XIII

Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession,

or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.

ARTICLE XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories as to which a notification has been given under article XIII. The denunciation shall be made by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

ARTICLE XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

ARTICLE XVI

1. This Convention shall be established in English, French and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this Convention shall be established in German, Italian and Portuguese.

Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General of the United Nations Educational, Scientific and Cultural Organization other texts in the language of its choice by arrangement with the Director-General.

All such texts shall be annexed to the signed texts of this Convention.

ARTICLE XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a Declaration has been annexed to the present article. This Declaration is an integral part of this Convention for the States bound by the Berne Convention on January 1, 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the Convention.

ARTICLE XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this

Convention comes into force in such State shall not be affected.

ARTICLE XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this article shall affect the provisions of article XVII and XVIII of this Convention.

ARTICLE XX

Reservations to this Convention shall not be permitted.

ARTICLE XXI

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall send duly certified copies of this Convention to the States interested, to the Swiss Federal Council and to the Secretary-General of the United Nations for registration by him.

He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under Article XIII of this Convention, and denunciations under Article XIV.

APPENDIX DECLARATION RELATING TO ARTICLE XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Convention of Berne and the Universal Convention,

Have, by common agreement, accepted the terms of the following declaration:

(a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention.

RESOLUTION CONCERNING ARTICLE XI

The Intergovernmental Copyright Conference

Having considered the problems relating to the Intergovernmental Committee provided for in Article XI of the Universal Copyright Convention

resolves

1. The first members of the Committee shall be representatives of the following twelve States, each of those States designating one representative and an alternate: Argentina, Brazil, France, Germany, India, Italy, Japan, Mexico, Spain, Switzerland, United Kingdom, and United States of America.

2. The Committee shall be constituted as soon as the Convention comes into force in accordance with article XI of this Convention;

3. The Committee shall elect its Chairman and one Vice-Chairman. It shall establish its rules of procedure having regard to the following principles:

(a) the normal duration of the term of office of the representatives shall be six years; with one third retiring every two years;

(b) before the expiration of the term of office of any members, the Committee shall decide which States shall cease to be represented on it and which States shall be called upon to designate representatives; the representatives of those States which have not ratified, accepted or acceded shall be the first to retire;

(c) the different parts of the world shall be fairly represented;

and expresses the wish

that the United Nations Educational, Scientific, and Cultural Organization provide its Secretariat.

In faith whereof the undersigned, having deposited their respective full powers, have signed this Convention. Done at Geneva, this sixth day of September, 1952 in a single copy.

Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees

The States parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as the "Convention") have accepted the following provisions:

1. Stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the Convention, be assimilated to the nationals of that State.

2. (a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(b) This Protocol shall enter into force in respect of each State, on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the Convention with respect to such State, whichever is the later.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Geneva this sixth day of September, 1952, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of Unesco. The Director-General shall send certified copies to the signatory States, to the Swiss Federal Council and to the Secretary-General of the United Nations for registration.

Protocol 2 annexed to the Universal Copyright Convention, concerning the application of that Convention to the works of certain international organizations

The State parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as the "Convention"),

Have accepted the following provisions:

1. (a) The protection provided for in article II (1) of the Convention shall apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith, or by the Organisation of American States;

(b) Similarly, article II (2) of the Convention shall apply to the said organisation or agencies.

2. (a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(b) This Protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the Convention with respect to such State, whichever is the later.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Geneva, this sixth day of September, 1952, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the Unesco.

The Director-General shall send certificated copies to the signatory States, to the Swiss Federal Council, and

to the Secretary-General of the United Nations for registration.

Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of or accession to that Convention

States parties hereto,

Recognizing that the application of the Universal Copyright Convention (hereinafter referred to as the "Convention") to States participating in all the international copyright systems already in force will contribute greatly to the value of the Convention;

Have agreed as follows:

1. Any State party hereto may, on depositing its instrument of ratification or acceptance of or accession to the Convention, notify the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as "Director-General") that that instrument shall not take effect for the purposes of Article IX of the Convention until any other State named in such notification shall have deposited its instrument.

2. The notification referred to in paragraph 1 above shall accompany the instrument to which it relates.

3. The Director-General shall inform all States signatory or which have then acceded to the Convention of any notifications received in accordance with this Protocol.

4. This Protocol shall bear the same date and shall remain open for signature for the same period as the Convention.

5. It shall be subject to ratification or acceptance by the signatory States. Any State which has not signed this Protocol may accede thereto.

6. (a) Ratification or acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

(b) This Protocol shall enter into force on the date of deposit of not less than four instruments of ratification or acceptance or accession. The Director-General shall inform all interested States of this date. Instruments deposited after such date shall take effect on the date of their deposit.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Geneva, the sixth day of September 1952, in the English, French and the Spanish languages, the three texts being equally authoritative, in a single copy which shall be annexed to the original copy of the Convention. The Director-General shall send certified copies to the signatory States to the Swiss Federal Council, and to the Secretary-General of United Nations for registration.

PARTICULAR PROCLAMATIONS, TREATIES AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND OTHER COUNTRIES

The following is based on *Treaties in Force*, as of January 1, 1998, published by the Department of State:

By virtue of Presidential proclamations, treaties, and conventions, the United States has established copyright relations with various other countries. This note is an attempt to present a complete and annotated list of those countries.

Proclamations by the President of the United States extending copyright protection upon compliance with the provisions of the United States copyright law, to the works of foreign authors prior to July 1, 1909, were issued pursuant to the Act of March 3, 1891 (26 Stat. 1106) and those issued subsequent to July 1, 1909, were issued under the provisions of the Act of March 4, 1909 (35 Stat. 1075), as amended by the Act of December 18, 1919 (41 Stat. 368) and the Act of September 25, 1941 (55 Stat. 732). The Act of March 4, 1909, as amended, became Title 17 of the United States Code when it was codified and enacted into positive law by the Act of July 30, 1947 (61 Stat. 652). Title 17 of the United States

Code was completely revised by the Act of October 19, 1976, (Public Law 94-553, 90 Stat. 2541), which became fully effective on January 1, 1978. A number of the proclamations were preceded or accompanied by exchanges of diplomatic notes which served as the basis for their issuance. Such exchanges of notes, if printed in the official pamphlet series, may be included in the preceding pages under appropriate country and subject heading.

The period for compliance with the conditions and formalities prescribed by the copyright law was extended by proclamation with respect to certain works in the case of a number of countries because of the disruption or suspension of facilities essential for such compliance during World War I and World War II. In the case of World War I, this period for compliance was extended by proclamations issued under the Act of December 18, 1919 (41 Stat. 368) to fifteen months after the proclamation, as to works published after August 1, 1914, and before the proclamation of peace. In the case of World War II, this period was extended by proclamations issued under the Act of September 25, 1941 (55 Stat. 732) until such time as terminated or suspended, either by the terms of the proclamation itself or by the issuance of a subsequent proclamation. A number of the proclamations issued under the 1919 Act and all of the proclamations issued under the 1941 Act refer to rights previously granted.

KEY TO SYMBOLS PROCLAMATIONS

P	Proclamation issued pursuant to the Act of March 3, 1891, the Act of March 4, 1909, and as amended, or Title 17 of the United States Code.
Pm	Proclamation including mechanical reproduction rights for musical works under the United States copyright law.
Px	Proclamation providing an extension of time under the Act of December 18, 1919, for compliance with the conditions and formalities prescribed by the United States copyright law.
Pmx	Proclamation specifically including provisions similar to those contained in both "Pm" and "Px" proclamations.
Pxx	Proclamation providing an extension of time under the Act of September 25, 1941, for compliance with the conditions and formalities prescribed by the United States copyright law.
Po	Proclamation specifically issued for the purpose of terminating a proclamation issued under the Act of September 25, 1941.
TREATIES AND CONVENTIONS	
BAC	Buenos Aires Convention. Convention on literary and artistic copyright between the United States and other American Republics, signed at the Fourth International Conference of American States at Buenos Aires August 11, 1910. U.S. ratification deposited on May 1, 1911. Convention proclaimed by the President of the United States on July 13, 1914.

Berne	The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971. Appearing within parentheses is the latest Act ²⁷ of the Convention to which the listed country is party. The Berne Convention, as revised at Paris on July 24, 1971, and amended on October 2, 1979, did not enter into force with respect to the United States until March 1, 1989.
MCC	Mexico City Convention. Convention on literary and artistic copyrights signed at the Second International Conference of American States at Mexico City, January 27, 1902, effective June 30, 1908, to which the United States became a party, effective on that same date. As regards copyright relations with the United States, this convention is considered to have been superseded by adherence of the foreign country and the United States to the Buenos Aires Convention of August 11, 1910.
UCC	Universal Copyright Convention. Done at Geneva September 6, 1952. Came into force on September 16, 1955. United States became a party, effective on that same date.
UCC rev.	Universal Copyright Convention revised. Done at Paris July 24, 1971. Came into force on July 10, 1974. United States became a party, effective on that same date.
C	Bilateral convention.
Cm	Bilateral convention including provisions covering mechanical reproduction rights for musical works.
T	Treaty relating in part to copyright.
Pg	Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. Done at Geneva October 29, 1971. Entered into force with respect to the United States on March 10, 1974.
Pcss	Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. Done at Brussels May 21, 1974. Entered into force with respect to the United States on March 7, 1985.
WTO	Member of the World Trade Organization, established pursuant to the Marrakesh Agreement of April 15, 1994, to implement the Uruguay Round Agreements. These Agreements affect, among other things, intangible property rights, including copyright and other intellectual property rights. The effective date of United States membership in the WTO is January 1, 1995. A country's membership in the World Trade Organization is effective as of the date indicated.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES

Country	Document	Date of Document	Effective Date for Party ²⁸	Reference
Albania	Berne (Paris)	July 24, 1971	Mar. 6, 1994	T. Doc. 99-27.
Algeria	UCC	Sept. 6, 1952	Aug. 28, 1973	6 UST 2731.
Andorra	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
Angola	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Antigua and Barbuda	WTO	Apr. 15, 1994	Nov. 23, 1996	33 ILM 15.
Argentina	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Pm	Aug. 23, 1934	Aug. 23, 1934	49 Stat. 3413.
	BAC	Aug. 11, 1910	Apr. 19, 1950	38 Stat. 1785.
	UCC	Sept. 6, 1952	Feb. 13, 1958	6 UST 2731.
	Berne (Brussels)	June 26, 1948	June 10, 1967	331 UNTS 217.
	Pg ³²	Oct. 29, 1971	June 30, 1973	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Armenia	Pcss	May 21, 1974	Dec. 13, 1993	T. Doc. 98-31.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Australia ¹	Pm Pxx ² UCC Pg UCC rev. Berne (Paris) Pcss WTO	Apr. 3, 1918 Dec. 29, 1949 Sept. 6, 1952 Oct. 29, 1971 July 24, 1971 July 24, 1971 May 21, 1974 Apr. 15, 1994	Mar. 15, 1918 Dec. 29, 1949 May 1, 1969 June 22, 1974 Feb. 28, 1978 Mar. 1, 1978 Oct. 26, 1990 Jan. 1, 1995	40 Stat. 1764. 64 Stat. A385. 6 UST 2731. 25 UST 309. 25 UST 1341. T. Doc. 99-27. T. Doc. 98-31. 33 ILM 15.
Austria ³	P Px Pm Pxx UCC Pcss ³¹ UCC rev. Pg Berne (Paris) WTO	Sept. 20, 1907 Apr. 9, 1910 May 25, 1922 Mar. 11, 1925 June 15, 1960 Sept. 6, 1952 May 21, 1974 July 24, 1971 Oct. 29, 1971 July 24, 1971 Apr. 15, 1994	Sept. 20, 1907 July 1, 1909 May 25, 1922 Aug. 1, 1920 June 15, 1960 July 2, 1957 Aug. 6, 1982 Aug. 14, 1982 Aug. 21, 1982 Aug. 21, 1982 Jan. 1, 1995	35 Stat. 2155. 36 Stat. 2685. 42 Stat. 2273. 44 Stat. 2571. 74 Stat. C69. 6 UST 2731. T. Doc. 98-31. 25 UST 1341. 25 UST 309. T. Doc. 99-27. 33 ILM 15.
Bahamas, The	UCC UCC rev. WTO	Sept. 6, 1952 July 24, 1971 Apr. 15, 1994	Oct. 13, 1976 Dec. 27, 1976 July 10, 1973	6 UST 2731. 25 UST 1341. 331 UNTS 217.
Bahrain	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Bangladesh	Berne (Paris) UCC UCC rev.	July 24, 1971 Sept. 6, 1952 July 24, 1971	Mar. 2, 1997 Aug. 5, 1975 Aug. 5, 1975	T. Doc. 99-27. 6 UST 2731. 25 UST 1341.
Barbados	WTO UCC UCC rev. Pg Berne (Paris)	Apr. 15, 1994 Sept. 6, 1952 July 24, 1971 Oct. 29, 1971 July 24, 1971	Jan. 1, 1995 June 18, 1983 June 18, 1983 July 29, 1983 July 30, 1983	33 ILM 15. 6 UST 2731. 25 UST 1341. 25 UST 309. T. Doc. 99-27.
Belarus	WTO UCC	Apr. 15, 1994 Sept. 6, 1952	Jan. 1, 1995 May 27, 1973	33 ILM 15. 6 UST 2731.
Belgium	Berne (Paris) P P Pm Berne (Brussels) UCC WTO	July 24, 1971 July 1, 1891 Apr. 9, 1910 June 14, 1911 June 26, 1948 Sept. 6, 1952 Apr. 15, 1994	Dec. 12, 1997 July 1, 1891 July 1, 1909 July 1, 1909 Aug. 1, 1951 Aug. 31, 1960 Jan. 1, 1995	T. Doc. 99-27. 27 Stat. 981. 36 Stat. 2685. 37 Stat. 1688. 331 UNTS 217. 6 UST 2731. 33 ILM 15.
Belize	UCC ²⁰ WTO	Sept. 6, 1952 Apr. 15, 1994	Dec. 1, 1982 Jan. 1, 1995	6 UST 2731. 33 ILM 15.
Benin	Berne (Paris) WTO	July 24, 1971 Apr. 15, 1994	Mar. 12, 1975 Feb. 22, 1996	T. Doc. 99-27. 33 ILM 15.
Bolivia	BAC UCC UCC rev. Berne (Paris) WTO	Aug. 11, 1910 Sept. 6, 1952 July 24, 1971 July 24, 1971 Apr. 15, 1994	May 15, 1914 Mar. 22, 1990 Mar. 22, 1990 Nov. 4, 1993 Sept. 13, 1995	38 Stat. 1785. 6 UST 2731. 25 UST 1341. T. Doc. 99-27. 33 ILM 15.
Bosnia and Herzegovina	UCC UCC rev. Berne (Paris) Pcss WTO	Sept. 6, 1952 July 24, 1971 July 24, 1971 May 21, 1974 Apr. 15, 1994	May 11, 1966 July 10, 1974 Mar. 6, 1982 Mar. 6, 1982 May 31, 1995	6 UST 2731. 25 UST 1341. T. Doc. 99-27. T. Doc. 98-31. 33 ILM 15.
Botswana	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Brazil	BAC Pm UCC Berne (Paris) Pg UCC rev.	Aug. 11, 1910 Apr. 2, 1957 Sept. 6, 1952 July 24, 1971 Oct. 29, 1971 July 24, 1971	Aug. 31, 1915 Apr. 2, 1957 Jan. 13, 1960 Apr. 20, 1975 Nov. 28, 1975 Dec. 11, 1975	38 Stat. 1785. 8 UST 424. 6 UST 2731. T. Doc. 99-27. 25 UST 309. 25 UST 1341.
Brunei	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Bulgaria	Berne (Paris) UCC UCC rev. Pg WTO	July 24, 1971 Sept. 6, 1952 July 24, 1971 Oct. 29, 1971 Apr. 15, 1994	Dec. 4, 1974 June 7, 1975 June 7, 1975 Sept. 6, 1995 Dec. 1, 1996	T. Doc. 99-27. 6 UST 2731. 25 UST 1341. 25 UST 309. 33 ILM 15.
Burkina Faso	Berne (Paris) Pg WTO	July 24, 1971 Oct. 29, 1971 Apr. 15, 1994	Jan. 24, 1976 Jan. 30, 1988 June 3, 1995	T. Doc. 99-27. 25 UST 309. 33 ILM 15.
Burma	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Burundi	WTO	Apr. 15, 1994	July 23, 1995	33 ILM 15.
Cambodia ⁶	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Cameroon	UCC UCC rev. Berne (Paris) WTO	Sept. 6, 1952 July 24, 1971 July 24, 1971 Apr. 15, 1994	May 1, 1973 July 10, 1974 Oct. 10, 1974 Dec. 13, 1995	6 UST 2731. 25 UST 1341. T. Doc. 99-27. 33 ILM 15.
Canada ¹	Pm Berne (Rome) UCC WTO	Dec. 27, 1923 June 2, 1928 Sept. 6, 1952 Apr. 15, 1994	Jan. 1, 1924 Apr. 10, 1928 Aug. 10, 1962 Jan. 1, 1995	43 Stat. 1932. 123 LNTS 232. 6 UST 2731. 33 ILM 15.
Central African Republic	Berne (Paris) WTO	July 24, 1971 Apr. 15, 1994	Sept. 3, 1977 May 31, 1995	T. Doc. 99-27. 33 ILM 15.
Chad	Berne (Brussels) WTO	June 26, 1948 Apr. 15, 1994	Nov. 25, 1971 Oct. 19, 1996	331 UNTS 217. 33 ILM 15.
Chile	P P Pm BAC UCC Berne (Paris) Pg WTO	May 25, 1896 Apr. 9, 1910 Nov. 18, 1925 Aug. 11, 1910 Sept. 6, 1952 July 24, 1971 Oct. 29, 1971 Apr. 15, 1994	May 25, 1896 July 1, 1909 July 1, 1925 June 14, 1955 Sept. 16, 1955 July 10, 1975 Mar. 24, 1977 Jan. 1, 1995	29 Stat. 880. 36 Stat. 2685. 44 Stat. 2590. 38 Stat. 1785. 6 UST 2731. T. Doc. 99-27. 25 UST 309. 33 ILM 15.
China	T T P ⁴ Berne (Paris) UCC UCC rev. Pg	Oct. 8, 1903 Nov. 4, 1946 Mar. 17, 1992 July 24, 1971 Sept. 6, 1952 July 24, 1971 Oct. 29, 1971	Jan. 13, 1904 Nov. 30, 1948 Mar. 17, 1992 Oct. 15, 1992 Oct. 30, 1992 Oct. 30, 1992 Apr. 30, 1993	33 Stat. 2208. 63 Stat. 1299. 57 F. Reg. 9647. T. Doc. 99-27. 6 UST 2731. 25 UST 1341. 25 UST 309.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Colombia	BAC	Aug. 11, 1910	Dec. 23, 1936	38 Stat. 1785.
	UCC	Sept. 6, 1952	June 18, 1976	6 UST 2731.
	UCC rev.	July 24, 1971	June 18, 1976	25 UST 1341.
	Berne (Paris)	July 24, 1971	Mar. 7, 1988	T. Doc. 99-27.
	Pg	Oct. 29, 1971	May 16, 1994	25 UST 309.
	WTO	Apr. 15, 1994	Apr. 30, 1995	33 ILM 15.
Congo	Berne (Paris)	July 24, 1971	Dec. 5, 1975	T. Doc. 99-27.
Congo, Democratic Republic of (formerly Zaire).	Berne (Paris)	July 24, 1971	Jan. 31, 1975	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Nov. 29, 1977	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1997	33 ILM 15.
Costa Rica	P	Oct. 19, 1899	Oct. 19, 1899	31 Stat. 1955.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Nov. 30, 1916	38 Stat. 1785.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Berne (Paris)	July 24, 1971	June 10, 1978	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Mar. 7, 1980	25 UST 1341.
	Pg	Oct. 29, 1971	June 17, 1982	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Cote d'Ivoire	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Croatia	UCC	Sept. 6, 1952	May 11, 1966	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 8, 1991	T. Doc. 99-27.
	Pcss	May 21, 1974	Oct. 8, 1991	T. Doc. 98-31.
Cuba	P	Nov. 17, 1903	Nov. 17, 1903	33 Stat. 2324.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Nov. 27, 1911	May 29, 1911	37 Stat. 1721.
	UCC	Sept. 6, 1952	June 18, 1957	6 UST 2731.
	WTO	Apr. 15, 1994	Apr. 20, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Feb. 20, 1997	T. Doc. 99-27.
	Berne (Paris)	July 24, 1971	July 27, 1983	T. Doc. 99-27.
Cyprus	UCC	Sept. 6, 1952	Dec. 19, 1990	6 UST 2731.
	UCC rev.	July 24, 1971	Dec. 19, 1990	25 UST 1341.
	Pg	Oct. 29, 1971	Sept. 30, 1993	25 UST 309.
	WTO	Apr. 15, 1994	July 30, 1995	33 ILM 15.
Czech Republic ³³	UCC	Sept. 6, 1952	Jan. 6, 1960	6 UST 2731.
	UCC rev.	July 24, 1971	Apr. 17, 1980	25 UST 1341.
	Berne (Paris)	July 24, 1971	Jan. 1, 1993	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Jan. 1, 1993	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Czechoslovakia ^{34, 35}	Pm	Apr. 27, 1927	Mar. 1, 1927	45 Stat. 2906.
Danzig	Pm	Apr. 7, 1934	Apr. 7, 1934	48 Stat. 1737.
Denmark ⁵	P	May 8, 1893	May 8, 1893	28 Stat. 1219.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pmx	Dec. 9, 1920	Dec. 9, 1920	41 Stat. 1810.
	Pxx	Feb. 4, 1952	Feb. 4, 1952	66 Stat. C20.
	UCC	Sept. 6, 1952	Feb. 9, 1962	6 UST 2731.
	Pg	Oct. 29, 1971	Mar. 24, 1977	25 UST 309.
	Berne (Paris)	July 24, 1971	June 30, 1979	T. Doc. 99-27.
	UCC rev.	July 24, 1971	July 11, 1979	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Djibouti	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Dominica	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Dominican Rep.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Oct. 31, 1912	38 Stat. 1785.
	UCC	Sept. 6, 1952	May 8, 1983	6 UST 2731.
	UCC rev.	July 24, 1971	May 8, 1983	25 UST 1341.
	WTO	Apr. 15, 1994	Mar. 9, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Dec. 24, 1997	T. Doc. 99-27.
Ecuador	BAC	Aug. 11, 1910	Aug. 31, 1914	38 Stat. 1785.
	UCC	Sept. 6, 1952	June 5, 1957	6 UST 2731.
	Pg	Oct. 29, 1971	Sept. 14, 1974	25 UST 309.
	UCC rev.	July 24, 1971	Sept. 6, 1991	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 9, 1991	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 21, 1996	33 ILM 15.
Egypt	Berne (Paris)	July 24, 1971	T. Doc. 99-27.	33 ILM 15.
	Pg	Oct. 29, 1971	Apr. 23, 1978	25 UST 309.
	WTO	Apr. 15, 1994	June 30, 1995	33 ILM 15.
El Salvador	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	Pg	Oct. 29, 1971	Feb. 9, 1979	25 UST 309.
	UCC	Sept. 6, 1952	Mar. 29, 1979	6 UST 2731.
	UCC rev.	July 24, 1971	Mar. 29, 1979	25 UST 1341.
	Berne (Paris)	July 24, 1971	Feb. 19, 1994	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 7, 1995	33 ILM 15.
Equatorial Guinea	Berne (Paris)	July 24, 1971	June 26, 1997	T. Doc. 99-27.
Estonia	Berne (Paris)	July 24, 1971	Oct. 26, 1994	T. Doc. 99-27.
European Community	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Fiji	UCC	Sept. 6, 1952	Mar. 13, 1972	6 UST 2731.
	Berne (Brussels)	June 26, 1948	Dec. 1, 1971	331 UNTS 217.
	Pg ³²	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 14, 1996	33 ILM 15.
Finland	Pm	Dec. 15, 1928	Jan. 1, 1929	45 Stat. 2980.
	Pxx	Nov. 16, 1951	Nov. 16, 1951	66 Stat. C5.
	UCC	Sept. 6, 1952	Apr. 16, 1963	6 UST 2731.
	Pg ³²	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
	Berne (Paris)	July 24, 1971	Nov. 1, 1986	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Nov. 1, 1986	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Former Yugoslav Republic of Macedonia	Berne (Paris)	July 24, 1971	Sept. 8, 1991	T. Doc. 99-27.
	Pcss	May 21, 1974	Nov. 17, 1991	T. Doc. 98-31.
France ⁶	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	May 24, 1918	May 24, 1918	40 Stat. 1784.
	Pxx	Mar. 27, 1947	Mar. 27, 1947	61 Stat. 1057.
	Po	May 26, 1950	Dec. 29, 1950	64 Stat. A413.
	UCC	Sept. 6, 1952	Jan. 14, 1956	6 UST 2731.
	Pg ³²	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Gabon	Berne (Paris)	July 24, 1971	June 10, 1975	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Gambia, The	Berne (Paris)	July 24, 1971	Mar. 7, 1993	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Oct. 23, 1996	33 ILM 15.
Georgia	Berne (Paris)	July 24, 1971	May 16, 1995	T. Doc. 99-27.
Germany ^{3, 29, 36}	P	Apr. 15, 1892	Apr. 15, 1892	27 Stat. 1021.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Dec. 8, 1910	Dec. 8, 1910	36 Stat. 2761.
	Px	May 25, 1922	May 25, 1922	42 Stat. 2271.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Pxx	July 12, 1967	July 12, 1967	18 UST 2369.
	Pg	Oct. 29, 1971	May 18, 1974	25 UST 309.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	Pcss ³¹	May 21, 1974	Aug. 25, 1979	T. Doc. 98-31.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Ghana	UCC	Sept. 6, 1952	Aug. 22, 1962	6 UST 2731.
	Berne (Paris)	July 24, 1971	Oct. 11, 1991	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Greece	Pm	Feb. 23, 1932	Mar. 1, 1932	47 Stat. 2502.
	UCC	Sept. 6, 1952	Aug. 24, 1963	6 UST 2731.
	Berne (Paris)	July 24, 1971	Mar. 8, 1976	T. Doc. 99-27.
	Pcss	May 21, 1974	Oct. 22, 1991	T. Doc. 98-31.
	Pg	Oct. 29, 1971	Feb. 9, 1994	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Grenada	WTO	Apr. 15, 1994	Feb. 22, 1996	33 ILM 15.
Guatemala	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Mar. 28, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 28, 1964	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 1, 1977	25 UST 309.
	WTO	Apr. 15, 1994	July 21, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	July 28, 1997	T. Doc. 99-27.
Guinea	Berne (Paris)	July 24, 1971	Nov. 20, 1980	T. Doc. 99-27.
	UCC	Sept. 6, 1952	Nov. 13, 1981	6 UST 2731.
	UCC rev.	July 24, 1971	Nov. 13, 1981	25 UST 1341.
	WTO	Apr. 15, 1994	Oct. 25, 1995	33 ILM 15.
Guinea-Bissau	Berne (Paris)	July 24, 1971	July 22, 1991	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Guyana	Berne (Paris)	July 24, 1971	Oct. 25, 1994	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Haiti	BAC	Aug. 11, 1910	Nov. 27, 1919	38 Stat. 1785.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Berne (Paris)	July 24, 1971	Jan. 11, 1996	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 30, 1996	33 ILM 15.
Holy See (See entry under Vatican City).				
Honduras	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Apr. 27, 1914	38 Stat. 1785.
	Berne (Paris)	July 24, 1971	Jan. 25, 1990	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Mar. 6, 1990	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Hong Kong	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Hungary ³	Cm ⁷	Jan. 30, 1912	Oct. 16, 1912	37 Stat. 1631.
	Px	June 3, 1922	June 3, 1922	42 Stat. 2277.
	T ^{8, 9}	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 2065.
	UCC	Sept. 6, 1952	Jan. 23, 1971	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	Pg	Oct. 29, 1971	May 28, 1975	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Iceland	Berne (Rome)	June 2, 1928	Sept. 7, 1947	123 LNTS 232.
	UCC	Sept. 6, 1952	Dec. 18, 1956	6 UST 2731.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
India ^{1, 10}	Pm	Oct. 21, 1954	Aug. 15, 1947	5 UST 2529.
	UCC	Sept. 6, 1952	Jan. 21, 1958	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 12, 1975	25 UST 309.
	Berne (Paris)	July 24, 1971	May 6, 1984	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Apr. 7, 1988	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Indonesia	P	July 31, 1989	Aug. 1, 1989	103 Stat. 3069.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Sept. 5, 1997	T. Doc. 99-27.
Ireland ¹	Pm ¹¹	Sept. 28, 1929	Oct. 1, 1929	46 Stat. 3005.
	UCC	Sept. 6, 1952	Jan. 20, 1959	6 UST 2731.
	Berne (Brussels)	June 26, 1948	July 5, 1959	331 UNTS 217.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Israel ¹²	Pm	May 4, 1950	May 15, 1948	64 Stat. A402.
	Berne (Brussels)	June 26, 1948	Aug. 1, 1951	331 UNTS 217.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Pg	Oct. 29, 1971	May 1, 1978	25 UST 309.
	WTO	Apr. 15, 1994	Apr. 21, 1995	33 ILM 15.
Italy	P ¹³	Oct. 31, 1892	Oct. 31, 1892	27 Stat. 1043.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm ¹³	May 1, 1915	May 1, 1915	39 Stat. 1725.
	Px	June 3, 1922	June 3, 1922	42 Stat. 2276.
	T ^{9, 14}	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 1245.
	Pxx	Dec. 12, 1951	Dec. 12, 1951	66 Stat. C13.
	UCC	Sept. 6, 1952	Jan. 24, 1957	6 UST 2731.
	Pg	Oct. 29, 1971	Mar. 24, 1977	25 UST 309.
	Berne (Paris)	July 24, 1971	Nov. 14, 1979	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Jan. 25, 1980	25 UST 1341.
	Pcss ³¹	May 21, 1974	July 7, 1981	T. Doc. 98-31.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Jamaica	Berne (Paris)	July 24, 1971	Jan. 1, 1994	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Jan. 11, 1994	25 UST 309.
	WTO	Apr. 15, 1994	Mar. 9, 1995	33 ILM 15.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party</i> ²⁸	<i>Reference</i>
Japan	C ¹⁵ C ¹⁶ T ¹⁷ Pm ¹⁸ UCC Berne (Paris) UCC rev. Pg WTO	Nov. 10, 1905 May 19, 1908 Sept. 8, 1951 Nov. 10, 1953 Sept. 6, 1952 July 24, 1971 July 24, 1971 Oct. 29, 1971 Apr. 15, 1994	May 10, 1906 Aug. 6, 1908 Apr. 28, 1952 Apr. 28, 1952 Apr. 28, 1956 Apr. 24, 1975 Oct. 21, 1977 Oct. 14, 1978 Jan. 1, 1995	34 Stat. 2890. 35 Stat. 2044. 3 UST 3169. 5 UST 118. 6 UST 2731. T. Doc. 99-27. 25 UST 1341. 25 UST 309. 33 ILM 15.
Kazakhstan	UCC	Sept. 6, 1952	May 27, 1973	6 UST 2731.
Kenya	UCC	Sept. 6, 1952	Sept. 7, 1966	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Apr. 21, 1976	25 UST 309.
	Pcss ³¹	May 21, 1974	Aug. 25, 1979	T. Doc. 98-31.
	Berne (Paris)	July 24, 1971	June 11, 1993	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Korea	C ¹⁹	May 19, 1908	Aug. 6, 1908	35 Stat. 2041.
Korea, Republic of	UCC	Sept. 6, 1952	Oct. 1, 1987	6 UST 2731.
	UCC rev.	July 24, 1971	Oct. 1, 1987	25 UST 1341.
	Pg	Oct. 29, 1971	Oct. 10, 1987	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Aug. 21, 1996	T. Doc. 99-27.
Kuwait	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Laos ⁶	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Latvia	Berne (Paris)	July 24, 1971	Aug. 11, 1995	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Aug. 23, 1997	25 UST 309.
Lebanon	Berne (Rome)	June 2, 1928	Sept. 30, 1947	123 LNTS 232.
	UCC	Sept. 6, 1952	Oct. 17, 1959	6 UST 2731.
Lesotho	Berne (Paris)	July 24, 1971	Sept. 28, 1989	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Liberia	UCC	Sept. 6, 1952	July 27, 1956	6 UST 2731.
	Berne (Paris)	July 24, 1971	Mar. 8, 1989	T. Doc. 99-27.
Libya	Berne (Paris)	July 24, 1971	Sept. 28, 1976	T. Doc. 99-27.
Liechtenstein	Berne (Brussels)	June 26, 1948	Aug. 1, 1951	331 UNTS 217.
	UCC	Sept. 6, 1952	Jan. 22, 1959	6 UST 2731.
	WTO	Apr. 15, 1994	Sept. 1, 1995	33 ILM 15.
Lithuania	Berne (Paris)	July 24, 1971	Dec. 14, 1994	T. Doc. 99-27.
Luxembourg	P	June 29, 1910	June 29, 1910	36 Stat. 2716.
	Pm	June 14, 1911	June 29, 1910	37 Stat. 1689.
	UCC	Sept. 6, 1952	Oct. 15, 1955	6 UST 2731.
	Berne (Paris)	July 24, 1971	Apr. 20, 1975	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Mar. 8, 1976	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Macau	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Madagascar	Berne (Brussels)	June 26, 1948	Jan. 1, 1966	331 UNTS 217.
	WTO	Apr. 15, 1994	Nov. 17, 1995	33 ILM 15.
Malawi	UCC	Sept. 6, 1952	Oct. 26, 1965	6 UST 2731.
	Berne (Paris)	July 24, 1971	Oct. 12, 1991	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Malaysia	Berne (Paris)	July 24, 1971	Oct. 1, 1990	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Maldives	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Mali	Berne (Paris)	July 24, 1971	Dec. 5, 1977	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Malta	Berne (Rome)	June 2, 1928	Sept. 21, 1964	123 LNTS 232.
	UCC	Sept. 6, 1952	Nov. 19, 1968	6 UST 2731.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Mauritania	Berne (Paris)	July 24, 1971	Feb. 6, 1973	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Mauritius	UCC	Sept. 6, 1952	Mar. 12, 1968	6 UST 2731.
	Berne (Paris)	July 24, 1971	May 10, 1989	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Mexico	P	Feb. 27, 1896	Feb. 27, 1896	29 Stat. 877.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	UCC	Sept. 6, 1952	May 12, 1957	6 UST 2731.
	BAC	Aug. 11, 1910	Apr. 24, 1964	38 Stat. 1785.
	Pg ³²	Oct. 29, 1971	Dec. 21, 1973	25 UST 309.
	Berne (Paris)	July 24, 1971	Dec. 17, 1974	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Oct. 31, 1975	25 UST 1341.
	Pcss ³¹	May 21, 1974	Aug. 25, 1979	T. Doc. 98-31.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Moldova	Berne (Paris)	July 24, 1971	Nov. 2, 1995	T. Doc. 99-27.
Monaco	Pm	Oct. 15, 1952	Oct. 15, 1952	67 Stat. C16.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Berne (Paris)	July 24, 1971	Nov. 23, 1974	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Dec. 2, 1974	25 UST 309.
	UCC rev.	July 24, 1971	Dec. 13, 1974	25 UST 1341.
	UCC	Sept. 6, 1952	May 8, 1972	6 UST 2731.
	UCC rev.	July 24, 1971	Jan. 28, 1976	25 UST 1341.
	Pcss ³¹	May 21, 1974	June 30, 1983	T. Doc. 98-31.
	Berne (Paris)	July 24, 1971	May 17, 1987	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Mozambique	WTO	Apr. 15, 1994	Aug. 26, 1995	33 ILM 15.
Namibia	Berne (Paris)	July 24, 1971	Mar. 21, 1990	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Netherlands and Possessions	P	Nov. 20, 1899	Nov. 20, 1899	31 Stat. 1961.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Feb. 26, 1923	Oct. 2, 1922	42 Stat. 2297.
	UCC	Sept. 6, 1952	June 22, 1967	6 UST 2731.
	UCC rev.	July 24, 1971	Nov. 30, 1985	25 UST 1341.
	Berne (Paris)	July 24, 1971	Jan. 30, 1986	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Oct. 12, 1993	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
New Zealand ¹	Pm	Feb. 9, 1917	Dec. 1, 1916	39 Stat. 1815.
	Px	May 25, 1922	May 25, 1922	42 Stat. 2274.
	Pxx	Apr. 24, 1947	Apr. 24, 1947	61 Stat. 1065.
	Berne (Rome)	June 2, 1928	Dec. 4, 1947	123 LNTS 232.
	Po	May 26, 1950	Dec. 29, 1950	64 Stat. A414.
	UCC	Sept. 6, 1952	Sept. 11, 1964	6 UST 2731.
	Pg	Oct. 29, 1971	Aug. 13, 1976	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Nicaragua	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Dec. 15, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Aug. 16, 1961	6 UST 2731.
	Pcss ³¹	May 21, 1974	Aug. 25, 1979	T. Doc. 98-31.
	WTO	Apr. 15, 1994	Sept. 3, 1995	33 ILM 15.
Niger	Berne (Paris)	July 24, 1971	May 21, 1975	T. Doc. 99-27.
	UCC	Sept. 6, 1952	May 15, 1989	6 UST 2731.
	UCC rev.	July 24, 1971	May 15, 1989	25 UST 1341.
	WTO	Apr. 15, 1994	Dec. 13, 1996	33 ILM 15.
Nigeria	UCC	Sept. 6, 1952	Feb. 14, 1962	6 UST 2731.
	Berne (Paris)	July 24, 1971	Sept. 14, 1993	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Norway	P	July 1, 1905	July 1, 1905	34 Stat. 3111.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	June 14, 1911	Sept. 9, 1910	37 Stat. 1687.
	UCC	Sept. 6, 1952	Jan. 23, 1963	6 UST 2731.
	Berne (Paris)	July 24, 1971	Oct. 11, 1995	T. Doc. 99-27.
	UCC rev.	July 24, 1971	Aug. 7, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Aug. 1, 1978	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Pakistan ¹	Berne (Rome)	June 2, 1928	July 5, 1948	123 LNTS 232.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Palestine (excluding Trans-Jordan)	Pm	Sept. 29, 1933	Oct. 1, 1933	48 Stat. 1713.
	Pxx ¹²	Mar. 10, 1944	Mar. 10, 1944	58 Stat. 1129.
	Po ¹²	May 26, 1950	Dec. 29, 1950	64 Stat. A412.
Panama	BAC	Aug. 11, 1910	Nov. 25, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 17, 1962	6 UST 2731.
	Pg	Oct. 29, 1971	June 29, 1974	25 UST 309.
	UCC rev.	July 24, 1971	Sept. 3, 1980	25 UST 1341.
	Pcss	May 21, 1974	Sept. 25, 1985	T. Doc. 98-31.
	Berne (Paris)	July 24, 1971	June 8, 1996	T. Doc. 99-27.
Papua New Guinea	WTO	Apr. 15, 1994	June 9, 1996	33 ILM 15.
Paraguay	BAC	Aug. 11, 1910	Sept. 20, 1917	38 Stat. 1785.
	UCC	Sept. 6, 1952	Mar. 11, 1962	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 13, 1979	25 UST 309.
	Berne (Paris)	July 24, 1971	Jan. 2, 1992	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Peru	BAC	Aug. 11, 1910	Apr. 30, 1920	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 16, 1963	6 UST 2731.
	UCC rev.	July 24, 1971	July 22, 1985	25 UST 1341.
	Pcss	May 21, 1974	Aug. 7, 1985	T. Doc. 98-31.
	Pg	Oct. 29, 1971	Aug. 24, 1985	25 UST 309.
	Berne (Paris)	July 24, 1971	Aug. 20, 1988	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Philippines	Pm	Oct. 21, 1948	Oct. 21, 1948	62 Stat. 1568.
	UCC ²¹	Sept. 6, 1952	Nov. 19, 1955	6 UST 2731.
	Berne (Brussels)	June 26, 1948	Aug. 1, 1951	331 UNTS 217.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Poland	Pm	Feb. 14, 1927	Feb. 16, 1927	44 Stat. 2634.
	UCC	Sept. 6, 1952	Mar. 9, 1977	6 UST 2731.
	UCC rev.	July 24, 1971	Mar. 9, 1977	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 22, 1994	T. Doc. 99-27.
	WTO	Apr. 15, 1994	July 1, 1995	33 ILM 15.
Portugal	P	July 20, 1893	July 20, 1893	28 Stat. 1222.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	UCC	Sept. 6, 1952	Dec. 25, 1956	6 UST 2731.
	Berne (Paris)	July 24, 1971	Jan. 12, 1979	T. Doc. 99-27.
	UCC rev.	July 24, 1971	July 30, 1981	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Pcss	May 21, 1974	Mar. 11, 1996	T. Doc. 98-31.
Qatar	WTO	Apr. 15, 1994	Jan. 13, 1996	33 ILM 15.
Romania	Pm ²²	May 14, 1928	May 14, 1928	45 Stat. 2949.
	Berne (Rome)	June 2, 1928	Aug. 6, 1936	123 LNTS 232.
	T ^{9, 23}	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 1757.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Russian Federation	UCC	Sept. 6, 1952	May 27, 1973	6 UST 2731.
	Pcss ³⁰	May 21, 1974	Dec. 25, 1991	T. Doc. 98-31.
	UCC rev.	July 24, 1971	Mar. 9, 1995	25 UST 1341.
	Berne (Paris)	July 24, 1971	Mar. 13, 1995	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Mar. 13, 1995	25 UST 309.
Rwanda	Berne (Paris)	July 24, 1971	Mar. 1, 1984	T. Doc. 99-27.
	UCC	Sept. 6, 1952	Nov. 10, 1989	6 UST 2731.
	UCC rev.	July 24, 1971	Nov. 10, 1989	25 UST 1341.
	WTO	Apr. 15, 1994	May 22, 1996	33 ILM 15.
St. Kitts and Nevis	Berne (Paris)	July 24, 1971	Apr. 9, 1995	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Feb. 21, 1996	33 ILM 15.
Saint Lucia	Berne (Paris)	July 24, 1971	Aug. 24, 1993	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Saint Vincent and the Grenadines	UCC	Sept. 6, 1952	Apr. 22, 1985	6 UST 2731.
	UCC rev.	July 24, 1971	Apr. 22, 1985	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Aug. 29, 1995	T. Doc. 99-27.
Saudi Arabia	UCC	Sept. 6, 1952	July 13, 1994	6 UST 2731.
	UCC rev.	July 24, 1971	July 13, 1994	25 UST 1341.
Senegal	UCC	Sept. 6, 1952	July 9, 1974	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Aug. 12, 1975	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Sierra Leone	WTO	Apr. 15, 1994	July 23, 1995	33 ILM 15.
Singapore	P	May 18, 1987	May 18, 1987	101 Stat. 2134.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Slovakia ³⁷	UCC	Sept. 6, 1952	Jan. 6, 1960	6 UST 2731.
	UCC rev.	July 24, 1971	Apr. 17, 1980	25 UST 1341.
	Berne (Paris)	July 24, 1971	Jan. 1, 1993	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Jan. 1, 1993	25 UST 309.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Slovenia	UCC	Sept. 6, 1952	May 11, 1966	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	June 25, 1991	T. Doc. 99-27.
	Pcss	May 21, 1974	June 25, 1991	T. Doc. 98-31.
	WTO	Apr. 15, 1994	July 30, 1995	33 ILM 15.
	Pg	Oct. 29, 1971	Oct. 15, 1996	25 UST 309.
Solomon Islands	WTO	Apr. 15, 1994	July 26, 1996	33 ILM 15.
South Africa ¹	Pm	June 26, 1924	July 1, 1924	43 Stat. 1957.
	Berne (Brussels)	June 26, 1948	Aug. 1, 1951	331 UNTS 217.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Spain ⁵	P ²⁴	July 10, 1895	July 10, 1895	29 Stat. 871.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Oct. 10, 1934	Oct. 10, 1934	49 Stat. 3420.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Aug. 24, 1974	25 UST 309.
	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Sri Lanka (formerly Ceylon)	Berne (Rome)	June 2, 1928	July 20, 1959	123 LNTS 232.
	UCC	Sept. 6, 1952	Jan. 25, 1984	6 UST 2731.
	UCC rev.	July 24, 1971	Jan. 25, 1984	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Suriname	Berne (Paris)	July 24, 1971	Feb. 23, 1977	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Swaziland	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Sweden	P	May 26, 1911	June 1, 1911	37 Stat. 1682.
	Pm	Feb. 27, 1920	Feb. 1, 1920	41 Stat. 1787.
	UCC	Sept. 6, 1952	July 1, 1961	6 UST 2731.
	Pg ³²	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Oct. 10, 1974	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Switzerland	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Nov. 22, 1924	July 1, 1923	43 Stat. 1976.
	UCC	Sept. 6, 1952	Mar. 30, 1956	6 UST 2731.
	UCC rev.	July 24, 1971	Sept. 21, 1993	25 UST 1341.
	Pcss	May 21, 1974	Sept. 24, 1993	T. Doc. 98-31.
	Berne (Paris)	July 24, 1971	Sept. 25, 1993	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Sept. 30, 1993	25 UST 309.
	WTO	Apr. 15, 1994	July 1, 1995	33 ILM 15.
Tajikistan	UCC	Sept. 6, 1952	May 27, 1973	6 UST 2731.
Tanzania (United Republic of)	Berne (Paris)	July 24, 1971	July 25, 1994	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Thailand	T ²⁵	Dec. 16, 1920	Sept. 1, 1921	42 Stat. 1928.
	T ²⁵	Nov. 13, 1937	Oct. 1, 1938	53 Stat. 1731.
	T ²⁵	May 29, 1966	June 8, 1968	19 UST 5843.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
	Berne (Paris)	July 24, 1971	Sept. 2, 1995	T. Doc. 99-27.
Togo	Berne (Paris)	July 24, 1971	Apr. 30, 1975	T. Doc. 99-27.
	WTO	Apr. 15, 1994	May 31, 1995	33 ILM 15.
Trinidad and Tobago	Berne (Paris)	July 24, 1971	Aug. 16, 1988	T. Doc. 99-27.
	UCC	Sept. 6, 1952	Aug. 19, 1988	6 UST 2731.
	UCC rev.	July 24, 1971	Aug. 19, 1988	25 UST 1341.
	Pg	Oct. 29, 1971	Oct. 1, 1988	25 UST 309.
	WTO	Apr. 15, 1994	Mar. 1, 1995	33 ILM 15.
	Pcss	May 21, 1974	Nov. 1, 1996	T. Doc. 98-31.
Tunisia	P ²⁶	Oct. 4, 1912	Oct. 4, 1912	37 Stat. 1765.
	UCC	Sept. 6, 1952	June 19, 1969	6 UST 2731.
	UCC rev.	July 24, 1971	June 10, 1975	25 UST 1341.
	Berne (Paris)	July 24, 1971	Aug. 16, 1975	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Mar. 29, 1995	33 ILM 15.
Turkey	Berne (Paris)	July 24, 1971	Jan. 1, 1996	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Mar. 26, 1995	33 ILM 15.
Uganda	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Ukraine	UCC	Sept. 6, 1952	May 27, 1973	6 UST 2731.
	Berne (Paris)	July 24, 1971	Oct. 25, 1995	T. Doc. 99-27.
United Arab Emirates	WTO	Apr. 15, 1994	Apr. 10, 1996	33 ILM 15.
United Kingdom ¹	UCC	Sept. 6, 1952	Sept. 27, 1957	6 UST 2731.
	Pg ³²	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Jan. 2, 1990	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
United Kingdom and Possessions ¹	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
United Kingdom and the British Dominions, Colonies and Possessions with the exception of Canada, Australia, New Zealand, South Africa and Newfoundland ¹ .	Pm	Jan. 1, 1915	Jan. 1, 1915	38 Stat. 2044.
	Pmx	Apr. 10, 1920	Feb. 2, 1920	41 Stat. 1790.
United Kingdom, including certain British Territories ¹ and Palestine ¹² .	Pxx	Mar. 10, 1944	Mar. 10, 1944	58 Stat. 1129.
	Po	Mar. 26, 1950	Dec. 29, 1950	64 Stat. A412.
Uruguay	BAC	Aug. 11, 1910	Dec. 17, 1919	38 Stat. 1785.
	Berne (Paris)	July 24, 1971	Dec. 28, 1979	T. Doc. 99-27.
	Pg	Oct. 29, 1971	Jan. 18, 1983	25 UST 309.
	UCC	Sept. 6, 1952	Apr. 12, 1993	6 UST 2731.
	UCC rev.	July 24, 1971	Apr. 12, 1993	25 UST 1341.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Vatican City (Holy See)	UCC	Sept. 6, 1952	Oct. 5, 1955	6 UST 2731.
	Berne (Paris)	July 24, 1971	Apr. 24, 1975	T. Doc. 99-27.
	Pg	Oct. 29, 1971	July 18, 1977	25 UST 309.
	UCC rev.	July 24, 1971	May 6, 1980	25 UST 1341.
Venezuela	UCC	Sept. 6, 1952	Sept. 30, 1966	6 UST 2731.
	Pg	Oct. 29, 1971	Nov. 18, 1982	25 UST 309.
	Berne (Paris)	July 24, 1971	Dec. 30, 1982	T. Doc. 99-27.
	WTO	Apr. 15, 1994	Jan. 1, 1995	33 ILM 15.
Yugoslavia ³⁸	UCC	Sept. 6, 1952	May 11, 1966	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Berne (Paris)	July 24, 1971	Sept. 2, 1975	T. Doc. 99-27.
	Pcss ³¹	May 21, 1974	Aug. 25, 1979	T. Doc. 98-31.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES—CONTINUED

<i>Country</i>	<i>Document</i>	<i>Date of Document</i>	<i>Effective Date for Party²⁸</i>	<i>Reference</i>
Zambia	UCC Berne (Paris) WTO	Sept. 6, 1952 July 24, 1971 Apr. 15, 1994	June 1, 1965 Jan. 2, 1992 Jan. 1, 1995	6 UST 2731. T. Doc. 99-27. 33 ILM 15.
Zimbabwe	Berne (Rome) WTO	June 2, 1928 Apr. 15, 1994	Apr. 18, 1980 Mar. 3, 1995	123 LNTS 232. 33 ILM 15.

¹The proclamations of July 1, 1891 and April 9, 1910, apply to "Great Britain and the British possessions," but the proclamations of January 1, 1915 and April 10, 1920, specifically except Australia, Canada, Newfoundland, New Zealand, and South Africa. The proclamations of March 10, 1944 and May 26, 1950, enumerate the various British territories to which they apply; the enumeration does not mention the areas specifically excepted in the proclamations of 1915 and 1920. Proclamations establishing individual copyright relations with Australia, Canada, Ireland, New Zealand, Palestine, and South Africa are listed separately. See also footnotes 2, 11, and 12. The proclamation of December 27, 1923, regarding Canada is considered as applying to Newfoundland at the present time.

The copyright proclamations of July 1, 1891, April 9, 1910, January 1, 1915, April 10, 1920, and March 10, 1944, regarding Great Britain and possessions each applied when issued to the areas now within the boundaries of Burma, Ceylon, India, and Pakistan. See footnote 10 with respect to India. No announcement has been made as to the application of the proclamations to Burma, Ceylon, and Pakistan since they acquired their new status.

²The proclamation of December 29, 1949, extends for one year from its date the period of time for compliance by citizens of Australia with the conditions and formalities prescribed by the copyright law of the United States.

³The United States entered into treaties restoring friendly relations with Austria, Germany, and Hungary at Vienna on August 24, 1921 (42 Stat. 1946; TS 659), at Berlin on August 25, 1921 (42 Stat. 1939; TS 658); and at Budapest on August 29, 1921 (42 Stat. 1951; TS 610). By virtue of these treaties the United States became entitled to the benefits of the provisions relative to copyright protection in the treaties of peace signed by Austria, Germany, and Hungary at Saint-Germain-en-Laye on September 10, 1919, at Versailles on June 28, 1919, and at Trianon on June 4, 1920, respectively. See also footnote 7.

⁴Bilateral copyright relations between the People's Republic of China and the United States of America were established, effective March 17, 1992, by a Presidential Proclamation of the same date, under the authority of section 104 of title 17 of the United States Code, as amended by the Act of October 31, 1988 (Public Law 100-568, 102 Stat. 2853, 2855).

⁵Treaties and conventions containing provisions relative to copyright protection in territories ceded to the United States are not included in this table: for example, the Treaty of Peace with Spain signed at Paris, December 10, 1898 (30 Stat. 1754; TS 343), and the Convention with Denmark for the Cession to the United States of the Danish West Indies, signed at New York, August 4, 1916 (39 Stat. 1706; TS 629).

⁶The Department of State has made no announcement as to the application of the proclamations of July 1, 1891, April 9, 1910, May 24, 1918, and March 27, 1947, to Cambodia, Laos, and Vietnam.

⁷Copyright convention signed at Budapest January 30, 1912 (TS 571). This convention was continued in force following World War I by notice given by the United States on May 27, 1922, to Hungary in pursuance of Article 224 of the Treaty of Trianon concluded on June 4, 1920 (III Redmond 3539), to the benefits of which the United States became entitled by the Treaty of August 29, 1921, establishing friendly relations between the United States and Hungary (42 Stat. 1951; TS 660). The convention of 1912 was kept in force or revived following World War II by notice given on March 9, 1948, by the United States to Hungary pursuant to Article 10 of the Treaty of Peace with Hungary (61 Stat. 2065; Department of State Bulletin, March 21, 1948, p. 382).

⁸Treaty of Peace with Hungary (Annex IV A) dated at Paris, February 10, 1947 (TIAS 1651).

⁹Except with respect to rights of third parties, the provisions relating to protection of copyright in the annexes to the Treaties of Peace with Hungary, Italy, and Romania dated at Paris, February 10, 1947, are bilateral in character. For example, the provisions of Annex IV A of the Treaty of Peace with Hungary relate, in general, to copyright relations between Hungary, on the one hand, and each of the other ratifying or adhering States, on the other. Those provisions do not pertain to copyright relations between those other States, except for third party rights. Annex IV of the Treaty of Peace with Bulgaria dated at Paris, February 10, 1947 (61 Stat. 1915; TIAS 1650) contains similar provisions. See also footnote 13.

¹⁰The proclamation of October 21, 1954, affirms the existence of copyright relations with India after August 15, 1947 (the effective date of the Indian Independence Act). See also footnote 1.

¹¹The Department of State has determined that the entry into force on April 18, 1949, of the Republic of Ireland Act had no effect upon the proclamation of September 28, 1929, regarding the Irish Free State (Eire). Copyright relations with Ireland are therefore governed by that proclamation. See also footnote 1.

¹²The proclamations of March 10, 1944 and May 26, 1950, regarding Great Britain and possessions, also specifically refer to Palestine (excluding Trans-Jordan). See also footnote 1.

¹³The exchanges of notes between the United States and Italy, on the basis of which the proclamations of October 31, 1892 and May 1, 1915, were issued, were the subject of a note delivered on March 12, 1948, to the Italian Foreign Office by the American Embassy at Rome with respect to pre-war bilateral treaties and other international agreements which the United States desired to keep in force or revive pursuant to Article 44 of the Treaty of Peace with Italy. The note stated in part "that the Government of the United States of America wishes to include the reciprocal copyright arrangement between the United States and Italy effected pursuant to the exchange of notes signed at Washington October 28, 1892, and the exchanges of notes signed at Washington September 2, 1914, February 12, March 4, and March 11, 1915, among the pre-war bilateral treaties and other international agreements with Italy which the United States desires to keep in force or revive. Accordingly, it is understood that the aforementioned arrangement will continue in force and that the Government of each country will extend to the nationals of the other country treatment as favorable with respect to copyrights as was contemplated at the time the arrangement was entered into by the two countries." (Department of State Bulletin, April 4, 1948, p. 455).

¹⁴Treaty of Peace with Italy (Annex XV A) dated at Paris, January 10, 1947 (TIAS 1648).

¹⁵Copyright convention, signed at Tokyo, November 10, 1905 (TS 450). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace which Japan signed at San Francisco, September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the pre-war bilateral treaties or conventions which the United States wished to continue in force or revive.

¹⁶Convention between the United States and Japan for reciprocal protection of inventions, designs, trademarks, and copyrights in China and other countries where either contracting party may exercise extraterritorial jurisdiction, signed at Washington, May 19, 1908 (TS 507). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace with Japan signed at San Francisco, September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the pre-war bilateral treaties or conventions which the United States wished to continue in force or revive.

¹⁷Treaty of Peace with Japan (Articles 12, 14, and 15) signed at San Francisco, September 8, 1951 (TIAS 2490). See also footnotes 15, 16, 18, and 19.

¹⁸The proclamation of November 10, 1953, extends benefits under the copyright law for a period of four years from the coming into force of the Treaty of Peace with Japan (TIAS 2490). That period expired April 28, 1956.

¹⁹Copyright convention with Japan for reciprocal protection in Korea of inventions, designs, trademarks, and copyrights, signed at Washington, May 19, 1908 (TS 506). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace with Japan signed at San Francisco, September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the pre-war bilateral treaties or conventions which the United States wished to continue in force or revive.

²⁰Belize notified the Director-General of UNESCO on December 1, 1982, of its decision to apply "provisionally, and on the basis of reciprocity" the Universal Copyright Convention as adopted at Geneva on September 6, 1952, the application of which had been extended to its territory before the attainment of independence from the United Kingdom on September 21, 1981.

²¹An instrument of accession was deposited by the Philippine Government August 19, 1955. In a communication received by the State Department January 17, 1956, UNESCO stated that by a

note dated November 14, 1955, the Philippine Government informed the Director-General of UNESCO that "the President of the * * * Philippines has directed the withdrawal of the * * * accession * * * to the Universal Copyright Convention prior to the date of November 19, 1955, at which time the Convention would become effective" for the Philippines. The Director-General notified the Philippine Government that he "proposed to submit their communication to the States concerned, upon whom it is incumbent to declare what legal inference they intend to draw from it."

²²In a note delivered February 26, 1948, to the Romanian Minister for Foreign Affairs by the American Minister at Bucharest with respect to pre-war bilateral treaties and other international agreements which the United States desired to keep in force or revive pursuant to Article 10 of the Treaty of Peace with Romania, the following statement was made regarding the proclamation of May 14, 1928, and the exchange of notes on which it is based: "It shall be understood that the reciprocal copyright arrangement between the United States and Rumania effected pursuant to the exchanges of notes signed at Bucharest May 13 and October 21, 1927 and at Washington May 12 and 19, 1928 and the proclamation issued May 14, 1928 by the President of the United States of America will continue in force." (Department of State Bulletin, March 14, 1948, p. 356). See also footnote 9.

²³Treaty of Peace with Romania, dated at Paris, February 10, 1947 (TIAS 1649).

²⁴The proclamation of July 10, 1895, regarding Spain was based upon an arrangement between the United States and Spain effected by an exchange of notes signed at Washington, July 6 and 15, 1895. An agreement restoring the arrangement of July 6 and 15, 1895, was effected by an exchange of notes signed at Madrid, January 29 and November 18 and 26, 1902 (II Malloy 1710), following the Treaty of Peace between the United States and Spain signed at Paris, December 10, 1898 (30 Stat. 1754; TS 343). The latter treaty also contains in Article XIII the following provisions: "The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Puerto Rico, the Philippines and other ceded territories, at the time of the exchange of ratifications of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of ratification of this treaty."

²⁵Treaty of friendship, commerce and navigation, protocol and exchanges of notes, signed at Bangkok, November 13, 1937 (TS 940). This treaty replaces the treaty of friendship, commerce and navigation between the United States and Thailand signed at Washington, December 16, 1920 (TS 655). Article XII of which contains provisions relating to copyright protection. The treaty of amity and economic relations, with three exchanges of notes between the United States and Thailand signed at Bangkok, May 29, 1966 (TIAS 6540), replaces the treaty of November 13, 1937. Article V.2 contains provisions relating to copyright.

²⁶The proclamation of October 4, 1912, stated, in effect, that the law "in Tunis" extended to U.S. citizens protection substantially equal to the protection secured under the copyright law of the United States and declared that "the subjects of Tunis" were entitled to the benefits of the Act of March 4, 1909, as amended, except copyright controlling the mechanical reproduction of a copyrighted musical work.

²⁷"Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act). NOTE: In each case the reference to Act signifies adherence to the substantive provisions of such Act only, e.g., Articles 1 to 21 and the Appendix of the Paris Act.

²⁸The effective date is the date on which the designated State became party to the Convention or Treaty named, or in the case of the Berne Convention, the date on which the latest Act of the Convention to which such State is party entered into force with respect to that State.

²⁹The dates of adherence by Germany to multilateral treaties include adherence by the Federal Republic of Germany when that country was divided into the Federal Republic of Germany and the German Democratic Republic. However, through the accession, effective October 3, 1990, of the German Democratic Republic to the Federal Republic of Germany, in accordance with the German Unification Treaty of August 31, 1990, the German Democratic Republic ceased, on the said date, to be a sovereign state. Previously, the German Democratic Republic had become party to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works on February 18, 1978, but ceased to be a party to the said Convention on October 3, 1990. The German Democratic Republic had also been a member of the Universal Copyright Convention, having become party to the Ge-

neva text of the said Convention on October 5, 1973, and party to the revised Paris text of the same Convention on December 10, 1980.

³⁰The Union of Soviet Socialist Republics (or Soviet Union) was a party to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite from January 20, 1989, through December 24, 1991.

³¹The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite done at Brussels on May 21, 1974, did not enter into force with respect to the United States until March 7, 1985.

³²The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on October 29, 1971, did not enter into force with respect to the United States until March 10, 1974.

³³For 1992 and prior years, see Czechoslovakia.

³⁴See also Czech Republic, Slovak Republic, and Slovakia.

³⁵See note under CZECHOSLOVAKIA in bilateral section.

³⁶See note under GERMANY, FEDERAL REPUBLIC OF in bilateral section.

³⁷Also known as Slovak Republic. For 1992 and prior years, see Czechoslovakia.

³⁸See note under YUGOSLAVIA in bilateral section.

PROC. NO. 3792. COPYRIGHT EXTENSION: GERMANY

Proc. No. 3792, July 12, 1967, 32 F.R. 10341, provided:

WHEREAS the President is authorized, in accordance with the conditions prescribed in Section 9 of Title 17 of the United States Code which includes the provisions of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended by the act of September 25, 1941, 55 Stat. 732, to grant an extension of time for fulfillment of the conditions and formalities prescribed by the copyright laws of the United States of America, with respect to works first produced or published outside the United States of America and subject to copyright or to renewal of copyright under the laws of the United States of America, by nationals of countries which accord substantially equal treatment to citizens of the United States of America; and

WHEREAS satisfactory official assurances have been received that, since April 15, 1892, citizens of the United States have been entitled to obtain copyright in Germany for their works on substantially the same basis as German citizens without the need of complying with any formalities, provided such works secured protection in the United States; and

WHEREAS, pursuant to Article 2 of the Law No. 8, Industrial, Literary and Artistic Property Rights of Foreign Nations and Nationals, promulgated by the Allied High Commission for Germany on October 20, 1949, literary or artistic property rights in Germany owned by United States nationals at the commencement of or during the state of war between Germany and the United States of America which were transferred, seized, requisitioned, revoked or otherwise impaired by war measures, whether legislative, judicial or administrative, were, upon request made prior to October 3, 1950, restored to such United States nationals or their legal successors; and

WHEREAS, pursuant to Article 5 of the aforesaid law, any literary or artistic property right in Germany owned by a United States national at the commencement of or during the state of war between Germany and the United States of America was, upon request made prior to October 3, 1950, extended in term for a period corresponding to the inclusive time from the date of the commencement of the state of war, or such later date on which such right came in existence, to September 30, 1949; and

WHEREAS, by virtue of a proclamation by the President of the United States of America dated May 25, 1922, 42 Stat. 2271, German citizens are and have been entitled to the benefits of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended, including the benefits of Section 1(e) of the aforementioned Title 17 of the United States Code [section 1(e) of former Title 17]; and

WHEREAS, a letter of February 6, 1950, from the Chancellor of the Federal Republic of Germany to the Chairman of the Allied High Commission for Germany established the mutual understanding that reciprocal

copyright relations continued in effect between the Federal Republic of Germany and the United States of America:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by Section 9 of Title 17 of the United States Code [section 9 of former Title 17], do declare and proclaim:

(1) That, with respect to works first produced or published outside the United States of America: (a) where the work was subject to copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other owner who was then a German citizen; or (b) where the work was subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other person specified in Sections 24 and 25 of the aforesaid Title 17 [sections 24 and 25 of former Title 17], who was then a German citizen, there has existed during several years of the aforementioned period such disruption and suspension of facilities essential to compliance with conditions and formalities prescribed with respect to such works by the copyright law of the United States of America as to bring such works within the terms of Section 9(b) of the aforesaid Title 17 [section 9(b) of former Title 17]; and

(2) That, in view of the reciprocal treatment accorded to citizens of the United States by the Federal Republic of Germany, the time within which persons who are presently German citizens may comply with such conditions and formalities with respect to such works is hereby extended for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation. It shall also be understood that, as provided by Section 9(b) of Title 17, United States Code [section 9(b) of former Title 17], no liability shall attach under that title for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, or with respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation or performance of any such works.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-second.

LYNDON B. JOHNSON.

PRESIDENTIAL PROCLAMATIONS ISSUED UNDER
PREDECESSOR PROVISIONS

Section 104 of Pub. L. 94-553 provided that: "All proclamations issued by the President under section 1(e) or 9(b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President."

§ 104A. Copyright in restored works

(a) AUTOMATIC PROTECTION AND TERM.—

(1) TERM.—

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) EXCEPTION.—Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

(b) OWNERSHIP OF RESTORED COPYRIGHT.—A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

(c) FILING OF NOTICE OF INTENT TO ENFORCE RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

(d) REMEDIES FOR INFRINGEMENT OF RESTORED COPYRIGHTS.—

(1) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS IN THE ABSENCE OF A RELIANCE PARTY.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS AS AGAINST RELIANCE PARTIES.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B)(i) The owner of the restored copyright (or such owner's agent) or the owner of an

exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) COMMENCEMENT OF INFRINGEMENT FOR RELIANCE PARTIES.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

(e) NOTICES OF INTENT TO ENFORCE A RESTORED COPYRIGHT.—

(1) NOTICES OF INTENT FILED WITH THE COPYRIGHT OFFICE.—(A)(i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this para-

graph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B)(i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D)(i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) NOTICES OF INTENT SERVED ON A RELIANCE PARTY.—(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in

detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) EFFECT OF MATERIAL FALSE STATEMENTS.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

(f) IMMUNITY FROM WARRANTY AND RELATED LIABILITY.—

(1) IN GENERAL.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) PERFORMANCES.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

(g) PROCLAMATION OF COPYRIGHT RESTORATION.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

(2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

(h) DEFINITIONS.—For purposes of this section and section 109(a):

(1) The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

(A) a nation adhering to the Berne Convention;

(B) a WTO member country;

(C) a nation adhering to the WIPO Copyright Treaty;

(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

(E) subject to a Presidential proclamation under subsection (g).

(2) The “date of restoration” of a restored copyright is—

(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term “eligible country” means a nation, other than the United States, that—

(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

(C) adheres to the WIPO Copyright Treaty;

(D) adheres to the WIPO Performances and Phonograms Treaty; or

(E) after such date of enactment becomes subject to a proclamation under subsection (g).

(4) The term “reliance party” means any person who—

(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

(B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

(C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

(5) The term “restored copyright” means copyright in a restored work under this section.

(6) The term “restored work” means an original work of authorship that—

(A) is protected under subsection (a);

(B) is not in the public domain in its source country through expiration of term of protection;

(C) is in the public domain in the United States due to—

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility; and

(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(7) The term “rightholder” means the person—

(A) who, with respect to a sound recording, first fixes a sound recording with authorization, or

(B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.

(8) The “source country” of a restored work is—

(A) a nation other than the United States;
(B) in the case of an unpublished work—

(i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or

(ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(C) in the case of a published work—

(i) the eligible country in which the work is first published, or

(ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.

(Added Pub. L. 103-182, title III, §334(a), Dec. 8, 1993, 107 Stat. 2115; amended Pub. L. 103-465, title V, §514(a), Dec. 8, 1994, 108 Stat. 4976; Pub. L. 104-295, §20(e)(2), Oct. 11, 1996, 110 Stat. 3529; Pub. L. 105-80, §2, Nov. 13, 1997, 111 Stat. 1530; Pub. L. 105-304, title I, §102(c), Oct. 28, 1998, 112 Stat. 2862.)

AMENDMENT OF SUBSECTION (h)(6)

Pub. L. 105-304, title I, §§102(c)(3), 105(b)(2)(F), Oct. 28, 1998, 112 Stat. 2863, 2877, provided that, effective upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, subsection (h)(6) of this section is amended in subparagraph (C)(iii), by striking out “and” at end, in subparagraph (D), by substituting “; and” for the period at end, and by adding subparagraph (E) to read as follows:

(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.

REFERENCES IN TEXT

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsecs. (d)(3)(A) and (h)(3), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

Section 101(d)(15) of the Uruguay Round Agreements Act, referred to in subsec. (e)(1)(D)(i), is classified to section 3511(d)(15) of Title 19, Customs Duties.

AMENDMENTS

1998—Subsec. (h)(1)(A) to (E). Pub. L. 105-304, §102(c)(1), added subpars. (A) to (E) and struck out former subpars. (A) and (B) which read as follows:

“(A) a nation adhering to the Berne Convention or a WTO member country; or

“(B) subject to a Presidential proclamation under subsection (g).”

Subsec. (h)(3). Pub. L. 105-304, §102(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as fol-

lows: “The term ‘eligible country’ means a nation, other than the United States, that—

“(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

“(B) on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention; or

“(C) after such date of enactment becomes subject to a proclamation under subsection (g).

For purposes of this section, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment.”

Subsec. (h)(8)(B)(i). Pub. L. 105-304, §102(c)(4), inserted “of which” before “the majority” and struck out “of eligible countries” after “domiciliaries”.

Subsec. (h)(9). Pub. L. 105-304, §102(c)(5), struck out par. (9) which read as follows: “The terms ‘WTO Agreement’ and ‘WTO member country’ have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.”

1997—Subsec. (d)(3)(A). Pub. L. 105-80, §2(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “In the case of a derivative work that is based upon a restored work and is created—

“(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the derivative work is an eligible country on such date, or

“(ii) before the date of adherence or proclamation, if the source country of the derivative work is not an eligible country on such date of enactment,

a reliance party may continue to exploit that work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.”

Subsec. (e)(1)(B)(ii). Pub. L. 105-80, §2(2), struck out at end “Such list shall also be published in the Federal Register on an annual basis for the first 2 years after the applicable date of restoration.”

Subsec. (h)(2), (3). Pub. L. 105-80, §2(3), (4), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

“(2) The ‘date of restoration’ of a restored copyright is the later of—

“(A) the date on which the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

“(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

“(3) The term ‘eligible country’ means a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a proclamation under subsection (g).”

1996—Subsec. (h)(3). Pub. L. 104-295 substituted “subsection (g)” for “section 104A(g)”.

1994—Pub. L. 103-465 substituted “Copyright in restored works” for “Copyright in certain motion pictures” as section catchline and amended text generally, substituting present provisions for provisions restoring copyright in certain motion pictures and providing for effective date of protection as well as use of previously owned copies.

EFFECTIVE DATE OF 1998 AMENDMENT

Subsec. (h)(1)(A), (B), (E), (3)(A), (B), (E) of this section and amendment by section 102(c)(4), (5) of Pub. L. 105-304 effective Oct. 28, 1998, except as otherwise provided, subsec. (h)(1)(C), (3)(C) of this section effective upon entry into force of WIPO Copyright Treaty with

respect to United States, and subsec. (h)(1)(D), (3)(D) of this section and amendment by section 102(c)(3) of Pub. L. 105-304 effective upon entry into force of WIPO Performances and Phonograms Treaty with respect to United States, see section 105(a), (b)(1)(C), (D), (2)(D)–(F) of Pub. L. 105-304, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 335(a) of Pub. L. 103-182, set out in an Effective Date of 1993 Amendment note under section 1052 of Title 15, Commerce and Trade.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 109 of this title.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Scope of the Prohibition. The basic premise of section 105 of the bill is the same as that of section 8 of the present law [section 8 of former title 17]—that works produced for the U.S. Government by its officers and employees should not be subject to copyright. The provision applies the principle equally to unpublished and published works.

The general prohibition against copyright in section 105 applies to “any work of the United States Government,” which is defined in section 101 as “a work prepared by an officer or employee of the United States Government as part of that person’s official duties.” Under this definition a Government official or employee would not be prevented from securing copyright in a work written at that person’s own volition and outside his or her duties, even though the subject matter involves the Government work or professional field of the official or employee. Although the wording of the definition of “work of the United States Government” differs somewhat from that of the definition of “work made for hire,” the concepts are intended to be construed in the same way.

A more difficult and far-reaching problem is whether the definition should be broadened to prohibit copyright in works prepared under U.S. Government contract or grant. As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee, to secure copyright in works prepared in whole or in part with the use of Government funds. The argument that has been made against allowing copyright in this situation is that the public should not be required to pay a “double subsidy,” and that it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Govern-

ment funds. Those arguing in favor of potential copyright protection have stressed the importance of copyright as an incentive to creation and dissemination in this situation, and the basically different policy considerations, applicable to works written by Government employees and those applicable to works prepared by private organizations with the use of Federal funds.

The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term “work of the United States Government” does not mean that a work falling within the definition of that term is the property of the U.S. Government.

LIMITED EXCEPTION FOR NATIONAL TECHNICAL INFORMATION SERVICE

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 [§1151 et seq.] of Title 15 of the U.S. Code, to operate a clearinghouse for the collection and dissemination of scientific, technical and engineering information. Under its statute, NTIS is required to be as self-sustaining as possible, and not to force the general public to bear publishing costs that are for private benefit. The Department urged an amendment to section 105 that would allow it to secure copyright in NTIS publications both in the United States and abroad, noting that a precedent exists in the Standard Reference Data Act (15 U.S.C. §290(e) [§290e]).

In response to this request the Committee adopted a limited exception to the general prohibition in section 105, permitting the Secretary of Commerce to “secure copyright for a limited term not to exceed five years, on behalf of the United States as author or copyright owner” in any NTIS publication disseminated pursuant to 15 U.S.C. Chapter 23 [§1151 et seq.]. In order to “secure copyright” in a work under this amendment the Secretary would be required to publish the work with a copyright notice, and the five-year term would begin upon the date of first publication.

Proposed Saving Clause. Section 8 of the statute now in effect [section 8 of former title 17] includes a saving clause intended to make clear that the copyright protection of a private work is not affected if the work is published by the Government. This provision serves a

real purpose in the present law because of the ambiguity of the undefined term “any publication of the United States Government.” Section 105 of the bill, however, uses the operative term “work of the United States Government” and defines it in such a way that privately written works are clearly excluded from the prohibition; accordingly, a saving clause becomes superfluous.

Retention of a saving clause has been urged on the ground that the present statutory provision is frequently cited, and that having the provision expressly stated in the law would avoid questions and explanations. The committee here observes: (1) there is nothing in section 105 that would relieve the Government of its obligation to secure permission in order to publish a copyrighted work; and (2) publication or other use by the Government of a private work would not affect its copyright protection in any way. The question of use of copyrighted material in documents published by the Congress and its Committees is discussed below in connection with section 107.

Works of the United States Postal Service. The intent of section 105 [this section] is to restrict the prohibition against Government copyright to works written by employees of the United States Government within the scope of their official duties. In accordance with the objectives of the Postal Reorganization Act of 1970 [Pub. L. 91-375, which enacted title 39, Postal Service], this section does not apply to works created by employees of the United States Postal Service. In addition to enforcing the criminal statutes proscribing the forgery or counterfeiting of postage stamps, the Postal Service could, if it chooses, use the copyright law to prevent the reproduction of postage stamp designs for private or commercial non-postal services (for example, in philatelic publications and catalogs, in general advertising, in art reproductions, in textile designs, and so forth). However, any copyright claimed by the Postal Service in its works, including postage stamp designs, would be subject to the same conditions, formalities, and time limits as other copyrightable works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 290e.

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 120, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101-318, § 3(d), July 3, 1990, 104 Stat. 288; Pub. L. 101-650, title VII, § 704(b)(2), Dec. 1, 1990, 104 Stat. 5134; Pub. L. 104-39, § 2, Nov. 1, 1995, 109 Stat. 336.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

General Scope of Copyright. The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106. These exclusive rights, which comprise the so-called “bundle of rights” that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner’s exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made “subject to sections 107 through 118”, and must be read in conjunction with those provisions.

The exclusive rights accorded to a copyright owner under section 106 are “to do and to authorize” any of the activities specified in the five numbered clauses. Use of the phrase “to authorize” is intended to avoid any questions as to the liability of contributory infringers. For example, a person who lawfully acquires an authorized copy of a motion picture would be an infringer if he or she engages in the business of renting it to others for purposes of unauthorized public performance.

Rights of Reproduction, Adaptation, and Publication. The first three clauses of section 106, which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person’s copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to “copies or phonorecords,” although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. § 1).

Reproduction.—Read together with the relevant definitions in section 101, the right “to reproduce the copyrighted work in copies or phonorecords” means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be “perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author’s “expression” rather than merely the author’s “ideas” are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.

“Reproduction” under clause (1) of section 106 is to be distinguished from “display” under clause (5). For a work to be “reproduced,” its fixation in tangible form must be “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

Preparation of Derivative Works.—The exclusive right to prepare derivative works, specified separately in clause (2) of section 106, overlaps the exclusive right of reproduction to some extent. It is broader than that right, however, in the sense that reproduction requires

fixation in copies or phonorecords, whereas the preparation of a derivative work, such as a ballet, pantomime, or improvised performance, may be an infringement even though nothing is ever fixed in tangible form.

To be an infringement the "derivative work" must be "based upon the copyrighted work," and the definition in section 101 refers to "a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted." Thus, to constitute a violation of section 106(2), the infringing work must incorporate a portion of the copyrighted work in some form; for example, a detailed commentary on a work or a programmatic musical composition inspired by a novel would not normally constitute infringements under this clause.

Use in Information Storage and Retrieval Systems.—As section 117 declares explicitly, the bill is not intended to alter the present law with respect to the use of copyrighted works in computer systems.

Public Distribution.—Clause (3) of section 106 establishes the exclusive right of publication: The right "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." Under this provision the copyright owner would have the right to control the first public distribution of an authorized copy or phonorecord of his work, whether by sale, gift, loan, or some rental or lease arrangement. Likewise, any unauthorized public distribution of copies or phonorecords that were unlawfully made would be an infringement. As section 109 makes clear, however, the copyright owner's rights under section 106(3) cease with respect to a particular copy or phonorecord once he has parted with ownership of it.

Rights of Public Performance and Display. *Performing Rights and the "For Profit" Limitation.*—The right of public performance under section 106(4) extends to "literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works and sound recordings" and, unlike the equivalent provisions now in effect, is not limited by any "for profit" requirement. The approach of the bill, as in many foreign laws, is first to state the public performance right in broad terms, and then to provide specific exemptions for educational and other nonprofit uses.

This approach is more reasonable than the outright exemption of the 1909 statute. The line between commercial and "nonprofit" organizations is increasingly difficult to draw. Many "non-profit" organizations are highly subsidized and capable of paying royalties, and the widespread public exploitation of copyrighted works by public broadcasters and other noncommercial organizations is likely to grow. In addition to these trends, it is worth noting that performances and displays are continuing to supplant markets for printed copies and that in the future a broad "not for profit" exemption could not only hurt authors but could dry up their incentive to write.

The exclusive right of public performance is expanded to include not only motion pictures, including works recorded on film, video tape, and video disks, but also audiovisual works such as filmstrips and sets of slides. This provision of section 106(4), which is consistent with the assimilation of motion pictures to audiovisual works throughout the bill, is also related to amendments of the definitions of "display" and "perform" discussed below. The important issue of performing rights in sound recordings is discussed in connection with section 114.

Right of Public Display.—Clause (5) of section 106 represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public. The existence or extent of this right under the present statute is uncertain and subject to challenge. The bill would give the owners of copyright in "literary, musi-

cal, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works", including the individual images of a motion picture or other audiovisual work, the exclusive right "to display the copyrighted work publicly."

Definitions. Under the definitions of "perform," "display," "publicly," and "transmit" in section 101, the concepts of public performance and public display cover not only the initial rendition or showing, but also any further act by which that rendition or showing is transmitted or communicated to the public. Thus, for example: a singer is performing when he or she sings a song; a broadcasting network is performing when it transmits his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and any individual is performing whenever he or she plays a phonorecord embodying the performance or communicates the performance by turning on a receiving set. Although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself be a "performance" or "display" under the bill, it would not be actionable as an infringement unless it were done "publicly," as defined in section 101. Certain other performances and displays, in addition to those that are "private," are exempted or given qualified copyright control under sections 107 through 118.

To "perform" a work, under the definition in section 101, includes reading a literary work aloud, singing or playing music, dancing a ballet or other choreographic work, and acting out a dramatic work or pantomime. A performance may be accomplished "either directly or by means of any device or process," including all kinds of equipment for reproducing or amplifying sounds or visual images, any sort of transmitting apparatus, any type of electronic retrieval system, and any other techniques and systems not yet in use or even invented.

The definition of "perform" in relation to "a motion picture or other audiovisual work" is "to show its images in any sequence or to make the sounds accompanying it audible." The showing of portions of a motion picture, filmstrip, or slide set must therefore be sequential to constitute a "performance" rather than a "display", but no particular order need be maintained. The purely aural performance of a motion picture sound track, or of the sound portions of an audiovisual work, would constitute a performance of the "motion picture or other audiovisual work"; but, where some of the sounds have been reproduced separately on phonorecords, a performance from the phonorecord would not constitute performance of the motion picture or audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of the work, "either directly or by means of a film, slide, television image, or any other device or process." Since "copies" are defined as including the material object "in which the work is first fixed," the right of public display applies to original works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than a "performance") to show their "individual images nonsequentially." In addition to the direct showings of a copy of a work, "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, and the showing of an image on a cathode ray tube, or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of "publicly" in section 101, a performance or display is "public" if it takes place "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O.Bull. 203 (D.Md.1932), performances in "semipublic"

places such as clubs, lodges, factories, summer camps, and schools are “public performances” subject to copyright control. The term “a family” in this context would include an individual living alone, so that a gathering confined to the individual’s social acquaintances would normally be regarded as private. Routine meetings of businesses and governmental personnel would be excluded because they do not represent the gathering of a “substantial number of persons.”

Clause (2) of the definition of “publicly” in section 101 makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of “transmit”—to communicate a performance or display “by any device or process whereby images or sound are received beyond the place from which they are sent”—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a “transmission,” and if the transmission reaches the public in my [any] form, the case comes within the scope of clauses (4) or (5) of section 106.

Under the bill, as under the present law, a performance made available by transmission to the public at large is “public” even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission. The same principles apply whenever the potential recipients of the transmission represent a limited segment of the public, such as the occupants of hotel rooms or the subscribers of a cable television service. Clause (2) of the definition of “publicly” is applicable “whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”

AMENDMENTS

1995—Par. (6). Pub. L. 104-39 added par. (6).

1990—Pub. L. 101-650 substituted “120” for “119” in introductory provisions.

Pub. L. 101-318 substituted “119” for “118” in introductory provisions.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101-650, set out as a note under section 101 of this title.

Section 3(e)(3) of Pub. L. 101-318 provided that: “The amendment made by subsection (d) [amending this section] shall be effective as of November 16, 1988.”

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Common law rights, see section 301 of this title.

Copyright as distinct from property in object copyrighted, see section 202 of this title.

Copyright not capital asset, see section 1221 of Title 26, Internal Revenue Code.

Duration of copyright, see section 301 et seq. of this title.

Fines and penalties for willful infringement, see section 506 of this title.

Government publications as not copyrightable, see section 105 of this title.

Immoral and scandalous trademarks, registrability, see section 1052 of Title 15, Commerce and Trade.

Jurisdiction of district courts of actions—

Arising under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Founded on diversity of citizenship, see section 1332 of Title 28.

Preemption of other laws relating to exclusive rights within the general scope of copyright, see section 301 of this title.

Proclamation by President granting foreign authors copyright protection, see section 104 of this title.

Power of Congress to grant authors exclusive right to their writings, see Const. Art. I, § 8, cl. 8.

Remedies for infringement of copyright, see sections 502, 503, 504, 505 of this title.

Renewal of copyright, see section 304 of this title.

Transfer of copyright, see sections 201 and 204 of this title.

Venue of action—

Arising under act of Congress relating to copyrights, see section 1400 of Title 28, Judiciary and Judicial Procedure.

Founded on diversity of citizenship jurisdiction, see section 1391 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 106A, 107, 108, 109, 110, 112, 113, 114, 115, 117, 118, 120, 121, 201, 301, 501, 511, 602, 1001 of this title; title 2 section 170; title 18 section 2319.

§ 106A. Rights of certain authors to attribution and integrity

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) SCOPE AND EXERCISE OF RIGHTS.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coown-

ers of the rights conferred by subsection (a) in that work.

(c) EXCEPTIONS.—(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) DURATION OF RIGHTS.—(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) TRANSFER AND WAIVER.—(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work,

or of ownership of a copyright or of any exclusive right under a copyright in that work.

(Added Pub. L. 101-650, title VI, § 603(a), Dec. 1, 1990, 104 Stat. 5128.)

REFERENCES IN TEXT

Section 610(a) of the Visual Artists Rights Act of 1990 [Pub. L. 101-650], referred to in subsec. (d), is set out as an Effective Date note below.

EFFECTIVE DATE

Section 610 of title VI of Pub. L. 101-650 provided that:

“(a) IN GENERAL.—Subject to subsection (b) and except as provided in subsection (c), this title [enacting this section, amending sections 101, 107, 113, 301, 411, 412, 501, and 506 of this title, and enacting provisions set out as notes under this section and section 101 of this title] and the amendments made by this title take effect 6 months after the date of the enactment of this Act [Dec. 1, 1990].

“(b) APPLICABILITY.—The rights created by section 106A of title 17, United States Code, shall apply to—

“(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author; and

“(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

“(c) SECTION 608.—Section 608 [set out below] takes effect on the date of the enactment of this Act.”

STUDIES BY COPYRIGHT OFFICE

Section 608 of Pub. L. 101-650 provided that:

“(a) STUDY ON WAIVER OF RIGHTS PROVISION.—

“(1) STUDY.—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

“(2) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act [Dec. 1, 1990], the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

“(b) STUDY ON RESALE ROYALTIES.—

“(1) NATURE OF STUDY.—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

“(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

“(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

“(2) GROUPS TO BE CONSULTED.—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

“(3) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act [Dec. 1, 1990], the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106A, 107, 113, 301, 411, 412, 501, 506 of this title.

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101-650, title VI, §607, Dec. 1, 1990, 104 Stat. 5132; Pub. L. 102-492, Oct. 24, 1992, 106 Stat. 3145.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

General Background of the Problem. The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria

have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "by reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use. Similarly, the newly-added reference to "multiple copies for classroom use" is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered—"the purpose and character of the use"—to state explicitly that this factor includes a consideration of "whether such use is of a commercial nature or is for non-profit educational purposes." This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

General Intention Behind the Provision. The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combinations of circumstances that can arise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

Intention as to Classroom Reproduction. Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction, particularly photocopying. The arguments on the question are summarized at pp. 30-31 of this Committee's 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that "a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified."

At the same time the Committee recognizes, as it did in 1967, that there is a "need for greater certainty and protection for teachers." In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504(c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill [§501 et seq. of this title].

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of "the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today." This discussion appeared on pp. 32-35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94-473, pp. 63-65). The Committee has reviewed this discussion, and considers that it still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22 [this section], and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 [this section and section 504 of this title] which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107 [this section], but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS

WITH RESPECT TO BOOKS AND PERIODICALS

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223 [this section]. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill [this section]. There may be instances

in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. *Single Copying for Teachers*

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. *Multiple Copies for Classroom Use*

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that*:

- A. The copying meets the tests of brevity and spontaneity as defined below; *and*,
- B. Meets the cumulative effect test as defined below; *and*
- C. Each copy includes a notice of copyright.

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. *Prohibitions as to I and II Above*

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers' reprints or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America:

By IRWIN KARP, *Counsel*.

Association of American Publishers, Inc.:

By ALEXANDER C. HOFFMAN.

Chairman, Copyright Committee.

In a joint letter dated April 30, 1976, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill [this section].

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223 [this section]. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted

under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill [this section]. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.

3. Copying for the purpose of performance, except as in A(1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

The problem of off-the-air taping for nonprofit classroom use of copyrighted audiovisual works incorporated in radio and television broadcasts has proved to be difficult to resolve. The Committee believes that the fair use doctrine has some limited application in this area, but it appears that the development of detailed guidelines will require a more thorough exploration than has so far been possible of the needs and problems of a number of different interests affected, and of the various legal problems presented. Nothing in section 107 or elsewhere in the bill is intended to change or prejudice the law on the point. On the other hand, the Committee is sensitive to the importance of the problem, and urges the representatives of the various interests, if possible under the leadership of the Register of Copyrights, to continue their discussions actively and in a constructive spirit. If it would be helpful to a solution, the Committee is receptive to undertaking further consideration of the problem in a future Congress.

The Committee appreciates and commends the efforts and the cooperative and reasonable spirit of the parties who achieved the agreed guidelines on books and peri-

odicals and on music. Representatives of the American Association of University Professors and of the Association of American Law Schools have written to the Committee strongly criticizing the guidelines, particularly with respect to multiple copying, as being too restrictive with respect to classroom situations at the university and graduate level. However, the Committee notes that the Ad Hoc group did include representatives of higher education, that the stated "purpose of the * * * guidelines is to state the minimum and not the maximum standards of educational fair use" and that the agreement acknowledges "there may be instances in which copying which does not fall within the guidelines * * * may nonetheless be permitted under the criteria of fair use."

The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of fulfilling the need for greater certainty and protection for teachers. The Committee expresses the hope that if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months.

Reproduction and Uses for Other Purposes. The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case.

The fair use doctrine would be relevant to the use of excerpts from copyrighted works in educational broadcasting activities not exempted under section 110(2) or 112, and not covered by the licensing provisions of section 118. In these cases the factors to be weighed in applying the criteria of this section would include whether the performers, producers, directors, and others responsible for the broadcast were paid, the size and nature of the audience, the size and number of excerpts taken and, in the case of recordings made for broadcast, the number of copies reproduced and the extent of their reuse or exchange. The availability of the fair use doctrine to educational broadcasters would be narrowly circumscribed in the case of motion pictures and other audiovisual works, but under appropriate circumstances it could apply to the nonsequential showing of an individual still or slide, or to the performance of a short excerpt from a motion picture for criticism or comment.

Another special instance illustrating the application of the fair use doctrine pertains to the making of copies or phonorecords of works in the special forms needed for the use of blind persons. These special forms, such as copies in Braille and phonorecords of oral readings (talking books), are not usually made by the publishers for commercial distribution. For the most part, such copies and phonorecords are made by the Library of Congress' Division for the Blind and Physically Handicapped with permission obtained from the copyright owners, and are circulated to blind persons through regional libraries covering the nation. In addition, such copies and phonorecords are made locally by individual volunteers for the use of blind persons in their communities, and the Library of Congress conducts a program for training such volunteers. While the making of multiple copies or phonorecords of a work for general circulation requires the permission of the copyright owner, a problem addressed in section 710 of the bill, the making of a single copy or phonorecord by an individual as a free service for blind persons would properly be considered a fair use under section 107.

A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942. Aside from the deplorable fact that in a great many cases the only existing copy of a film has been

deliberately destroyed, those that remain are in immediate danger of disintegration; they were printed on film stock with a nitrate base that will inevitably decompose in time. The efforts of the Library of Congress, the American Film Institute, and other organizations to rescue and preserve this irreplaceable contribution to our cultural life are to be applauded, and the making of duplicate copies for purposes of archival preservation certainly falls within the scope of "fair use."

When a copyrighted work contains unfair, inaccurate, or derogatory information concerning an individual or institution, the individual or institution may copy and reproduce such parts of the work as are necessary to permit understandable comment on the statements made in the work.

The Committee has considered the question of publication, in Congressional hearings and documents, of copyrighted material. Where the length of the work or excerpt published and the number of copies authorized are reasonable under the circumstances, and the work itself is directly relevant to a matter of legitimate legislative concern, the Committee believes that the publication would constitute fair use.

During the consideration of the revision bill in the 94th Congress it was proposed that independent newsletters, as distinguished from house organs and publicity or advertising publications, be given separate treatment. It is argued that newsletters are particularly vulnerable to mass photocopying, and that most newsletters have fairly modest circulations. Whether the copying of portions of a newsletter is an act of infringement or a fair use will necessarily turn on the facts of the individual case. However, as a general principle, it seems clear that the scope of the fair use doctrine should be considerably narrower in the case of newsletters than in that of either mass-circulation periodicals or scientific journals. The commercial nature of the user is a significant factor in such cases: Copying by a profit-making user of even a small portion of a newsletter may have a significant impact on the commercial market for the work.

The Committee has examined the use of excerpts from copyrighted works in the art work of calligraphers. The committee believes that a single copy reproduction of an excerpt from a copyrighted work by a calligrapher for a single client does not represent an infringement of copyright. Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher or teacher in a learning situation would be a fair use of the copyrighted work.

The Register of Copyrights has recommended that the committee report describe the relationship between this section and the provisions of section 108 relating to reproduction by libraries and archives. The doctrine of fair use applies to library photocopying, and nothing contained in section 108 "in any way affects the right of fair use." No provision of section 108 is intended to take away any rights existing under the fair use doctrine. To the contrary, section 108 authorizes certain photocopying practices which may not qualify as a fair use.

The criteria of fair use are necessarily set forth in general terms. In the application of the criteria of fair use to specific photocopying practices of libraries, it is the intent of this legislation to provide an appropriate balancing of the rights of creators, and the needs of users.

AMENDMENTS

1992—Pub. L. 102-492 inserted at end "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

1990—Pub. L. 101-650 substituted "sections 106 and 106A" for "section 106" in introductory provisions.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set

out as an Effective Date note under section 106A of this title.

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

Remittance of statutory damages, see section 504 of this title.

Use of certain works in connection with noncommercial broadcasting, see section 118 of this title.

Use of material in conjunction with computers and similar information systems, see section 117 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 106A, 108, 118, 501, 504, 511 of this title; title 18 section 2319.

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such

act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or

a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 102-307, title III, § 301, June 26, 1992, 106 Stat. 272; Pub. L. 105-80, § 12(a)(4), Nov. 13, 1997, 111 Stat. 1534; Pub. L. 105-298, title I, § 104, Oct. 27, 1998, 112 Stat. 2829; Pub. L. 105-304, title IV, § 404, Oct. 28, 1998, 112 Stat. 2889.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Notwithstanding the exclusive rights of the owners of copyright, section 108 provides that under certain conditions it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce or distribute not more than one copy or phonorecord of a work, provided (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage and (2) the collections of the library or archives are open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field, and (3) the reproduction or distribution of the work includes a notice of copyright.

Under this provision, a purely commercial enterprise could not establish a collection of copyrighted works, call itself a library or archive, and engage in for-profit reproduction and distribution of photocopies. Similarly, it would not be possible for a non-profit institution, by means of contractual arrangements with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself.

The reference to "indirect commercial advantage" has raised questions as to the status of photocopying done by or for libraries or archival collections within industrial, profit-making, or proprietary institutions (such as the research and development departments of chemical, pharmaceutical, automobile, and oil corporations, the library of a proprietary hospital, the collections owned by a law or medical partnership, etc.).

There is a direct interrelationship between this problem and the prohibitions against "multiple" and "systematic" photocopying in section 108(g)(1) and (2). Under section 108, a library in a profitmaking organization would not be authorized to:

(a) use a single subscription or copy to supply its employees with multiple copies of material relevant to their work; or

(b) use a single subscription or copy to supply its employees, on request, with single copies of material relevant to their work, where the arrangement is "systematic" in the sense of deliberately substituting photocopying for subscription or purchase; or

(c) use "interlibrary loan" arrangements for obtaining photocopies in such aggregate quantities as to substitute for subscriptions or purchase of material needed by employees in their work.

Moreover, a library in a profit-making organization could not evade these obligations by installing reproducing equipment on its premises for unsupervised use by the organization's staff.

Isolated, spontaneous making of single photocopies by a library in a for-profit organization, without any systematic effort to substitute photocopying for subscriptions or purchases, would be covered by section 108, even though the copies are furnished to the em-

employees of the organization for use in their work. Similarly, for-profit libraries could participate in inter-library arrangements for exchange of photocopies, as long as the reproduction or distribution was not “systematic.” These activities, by themselves, would ordinarily not be considered “for direct or indirect commercial advantage,” since the “advantage” referred to in this clause must attach to the immediate commercial motivation behind the reproduction or distribution itself, rather than to the ultimate profit-making motivation behind the enterprise in which the library is located. On the other hand, section 108 would not excuse reproduction or distribution if there were a commercial motive behind the actual making or distributing of the copies, if multiple copies were made or distributed, or if the photocopying activities were “systematic” in the sense that their aim was to substitute for subscriptions or purchases.

The rights of reproduction and distribution under section 108 apply in the following circumstances:

Archival Reproduction. Subsection (b) authorizes the reproduction and distribution of a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security, or for deposit for research use in another library or archives, if the copy or phonorecord reproduced is currently in the collections of the first library or archives. Only unpublished works could be reproduced under this exemption, but the right would extend to any type of work, including photographs, motion pictures and sound recordings. Under this exemption, for example, a repository could make photocopies of manuscripts by microfilm or electrostatic process, but could not reproduce the work in “machine-readable” language for storage in an information system.

Replacement of Damaged Copy. Subsection (c) authorizes the reproduction of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price. The scope and nature of a reasonable investigation to determine that an unused replacement cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if such owner can be located at the address listed in the copyright registration), or an authorized reproducing service.

Articles and Small Excerpts. Subsection (d) authorizes the reproduction and distribution of a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a copy or phonorecord of a small part of any other copyrighted work. The copy or phonorecord may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purposes other than private study, scholarship or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and includes in its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

Out-of-Print Works. Subsection (e) authorizes the reproduction and distribution of a copy or phonorecord of an entire work under certain circumstances, if it has been established that a copy cannot be obtained at a fair price. The copy may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. The scope and nature of a reasonable investigation to determine that an unused copy cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the

publisher or other copyright owner (if the owner can be located at the address listed in the copyright registration), or an authorized reproducing service. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purpose other than private study, scholarship, or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

General Exemptions. Clause (1) of subsection (f) specifically exempts a library or archives or its employees from liability for the unsupervised use of reproducing equipment located on its premises, provided that the reproducing equipment displays a notice that the making of a copy may be subject to the copyright law. Clause (2) of subsection (f) makes clear that this exemption of the library or archives does not extend to the person using such equipment or requesting such copy if the use exceeds fair use. Insofar as such person is concerned the copy or phonorecord made is not considered “lawfully” made for purposes of sections 109, 110 or other provisions of the title.

Clause (3) provides that nothing in section 108 is intended to limit the reproduction and distribution by lending of a limited number of copies and excerpts of an audiovisual news program. This exemption is intended to apply to the daily newscasts of the national television networks, which report the major events of the day. It does not apply to documentary (except documentary programs involving news reporting as that term is used in section 107), magazine-format or other public affairs broadcasts dealing with subjects of general interest to the viewing public.

The clause was first added to the revision bill in 1974 by the adoption of an amendment proposed by Senator Baker. It is intended to permit libraries and archives, subject to the general conditions of this section, to make off-the-air videotape recordings of daily network news casts for limited distribution to scholars and researchers for use in research purposes. As such, it is an adjunct to the American Television and Radio Archive established in Section 113 of the Act [2 U.S.C. 170] which will be the principal repository for television broadcast material, including news broadcasts, the inclusion of language indicating that such material may only be distributed by lending by the library or archive is intended to preclude performance, copying, or sale, whether or not for profit, by the recipient of a copy of a television broadcast taped off-the-air pursuant to this clause.

Clause (4), in addition to asserting that nothing contained in section 108 “affects the right of fair use as provided by section 107”, also provides that the right of reproduction granted by this section does not override any contractual arrangements assumed by a library or archives when it obtained a work for its collections: For example, if there is an express contractual prohibition against reproduction for any purpose, this legislation shall not be construed as justifying a violation of the contract. This clause is intended to encompass the situation where an individual makes papers, manuscripts or other works available to a library with the understanding that they will not be reproduced.

It is the intent of this legislation that a subsequent unlawful use by a user of a copy or phonorecord of a work lawfully made by a library, shall not make the library liable for such improper use.

Multiple Copies and Systematic Reproduction. Subsection (g) provides that the rights granted by this section extend only to the “isolated and unrelated reproduction of a single copy or phonorecord of the same material on separate occasions.” However, this section does not authorize the related or concerted reproduction of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group.

With respect to material described in subsection (d)—articles or other contributions to periodicals or collections, and small parts of other copyrighted works—subsection (g)(2) provides that the exemptions of section 108 do not apply if the library or archive engages in “systematic reproduction or distribution of single or multiple copies or phonorecords.” This provision in S. 22 provoked a storm of controversy, centering around the extent to which the restrictions on “systematic” activities would prevent the continuation and development of interlibrary networks and other arrangements involving the exchange of photocopies. After thorough consideration, the Committee amended section 108(g)(2) to add the following proviso:

Provided, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

In addition, the Committee added a new subsection (i) to section 108 [this section], requiring the Register of Copyrights, five years from the effective date of the new Act and at five-year intervals thereafter, to report to Congress upon “the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users,” and to make appropriate legislative or other recommendations. As noted in connection with section 107, the Committee also amended section 504(c) in a way that would insulate librarians from unwarranted liability for copyright infringement; this amendment is discussed below.

The key phrases in the Committee’s amendment of section 108(g)(2) are “aggregate quantities” and “substitute for a subscription to or purchase of” a work. To be implemented effectively in practice, these provisions will require the development and implementation of more-or-less specific guidelines establishing criteria to govern various situations.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) offered to provide good offices in helping to develop these guidelines. This offer was accepted and, although the final text of guidelines has not yet been achieved, the Committee has reason to hope that, within the next month, some agreement can be reached on an initial set of guidelines covering practices under section 108(g)(2).

Works Excluded. Subsection (h) provides that the rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than “an audiovisual work dealing with news.” The latter term is intended as the equivalent in meaning of the phrase “audiovisual news program” in section 108(f)(3). The exclusions under subsection (h) do not apply to archival reproduction under subsection (b), to replacement of damaged or lost copies or phonorecords under subsection (c), or to “pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).”

Although subsection (h) generally removes musical, graphic, and audiovisual works from the specific exemptions of section 108, it is important to recognize that the doctrine of fair use under section 107 remains fully applicable to the photocopying or other reproduction of such works. In the case of music, for example, it would be fair use for a scholar doing musicological research to have a library supply a copy of a portion of a score or to reproduce portions of a phonorecord of a work. Nothing in section 108 impairs the applicability of the fair use doctrine to a wide variety of situations involving photocopying or other reproduction by a library of copyrighted material in its collections, where the user requests the reproduction for legitimate scholarly or research purposes.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-304, § 404(1)(A), (B), in introductory provisions, substituted “Except as otherwise provided in this title and notwithstanding” for “Notwithstanding” and inserted “, except as provided in subsections (b) and (c)” after “of a work”.

Subsec. (a)(3). Pub. L. 105-304, § 404(1)(C), inserted before period at end “that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section”.

Subsec. (b). Pub. L. 105-304, § 404(2), substituted “three copies or phonorecords” for “a copy or phonorecord”, struck out “in facsimile form” after “duplicated”, and substituted “if—

“(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

“(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.”

for “if the copy or phonorecord reproduced is currently in the collections of the library or archives.”

Subsec. (c). Pub. L. 105-304, § 404(3), substituted “three copies or phonorecords” for “a copy or phonorecord”, struck out “in facsimile form” after “duplicated”, inserted “or if the existing format in which the work is stored has become obsolete,” after “stolen,”, substituted “if—

“(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

“(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.”

for “if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.”, and inserted concluding provisions.

Subsecs. (h), (i). Pub. L. 105-298 added subsec. (h) and redesignated former subsec. (h) as (i).

1997—Subsec. (e). Pub. L. 105-80 substituted “fair price” for “pair price” in introductory provisions.

1992—Subsec. (i). Pub. L. 102-307 struck out subsec. (i), which read as follows: “Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.”

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-304, title IV, § 407, Oct. 28, 1998, 112 Stat. 2905, provided that: “Except as otherwise provided in this title [enacting section 4001 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 112, 114, 701, and 801 to 803 of this title, section 5314 of Title 5, Government Organization and Employees, and section 3 of Title 35, Patents, and enacting provisions set out as notes under sections 112 and 114 of this title], this title and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

Pub. L. 105-298, title I, § 106, Oct. 27, 1998, 112 Stat. 2829, provided that: “This title [amending this section and sections 203 and 301 to 304 of this title, enacting provisions set out as a note under section 101 of this title, and amending provisions set out as notes under

sections 101 and 304 of this title] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 27, 1998].”

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

Importation of copies or phonorecords by organization operated for scholarly, educational, or religious purposes and not for private gain, see section 602 of this title.

Reproduction and distribution of regularly scheduled newscasts or on-the-spot coverage of news event for research purposes by Librarian of Congress, see section 170 of Title 2, The Congress.

Use of material in conjunction with computers and similar information systems, see section 117 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 602 of this title; title 2 section 170; title 18 section 2319.

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord. Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright or, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—

(1) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or

(2) the date of the receipt of actual notice served under section 104A(d)(2)(B),

whichever occurs first.

(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phono-

record for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

(B) This subsection does not apply to—

(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

(C) Nothing in this subsection affects any provision of chapter 9 of this title.

(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyrights considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.

(3) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, “antitrust laws” has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(d) The privileges prescribed by subsections (a) and (c) do not, unless authorized by the copy-

right owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.

(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2548; Pub. L. 98-450, § 2, Oct. 4, 1984, 98 Stat. 1727; Pub. L. 100-617, § 2, Nov. 5, 1988, 102 Stat. 3194; Pub. L. 101-650, title VIII, §§ 802, 803, Dec. 1, 1990, 104 Stat. 5134, 5135; Pub. L. 103-465, title V, § 514(b), Dec. 8, 1994, 108 Stat. 4981; Pub. L. 105-80, § 12(a)(5), Nov. 13, 1997, 111 Stat. 1534.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Effect on Further Disposition of Copy or Phonorecord. Section 109(a) restates and confirms the principle that, where the copyright owner has transferred ownership of a particular copy or phonorecord of a work, the person to whom the copy or phonorecord is transferred is entitled to dispose of it by sale, rental, or any other means. Under this principle, which has been established by the court decisions and section 27 of the present law [section 27 of former title 17], the copyright owner's exclusive right of public distribution would have no effect upon anyone who owns "a particular copy or phonorecord lawfully made under this title" and who wishes to transfer it to someone else or to destroy it.

Thus, for example, the outright sale of an authorized copy of a book frees it from any copyright control over its resale price or other conditions of its future disposition. A library that has acquired ownership of a copy is entitled to lend it under any conditions it chooses to impose. This does not mean that conditions on future disposition of copies or phonorecords, imposed by a contract between their buyer and seller, would be unenforceable between the parties as a breach of contract, but it does mean that they could not be enforced by an action for infringement of copyright. Under section 202 however, the owner of the physical copy or phonorecord cannot reproduce or perform the copyrighted work publicly without the copyright owner's consent.

To come within the scope of section 109(a), a copy or phonorecord must have been "lawfully made under this title," though not necessarily with the copyright owner's authorization. For example, any resale of an illegally "pirated" phonorecord would be an infringement, but the disposition of a phonorecord legally made under the compulsory licensing provisions of section 115 would not.

Effect on Display of Copy. Subsection (b) of section 109 deals with the scope of the copyright owner's exclusive right to control the public display of a particular "copy" of a work (including the original or prototype copy in which the work was first fixed). Assuming, for example, that a painter has sold the only copy of an original work of art without restrictions, would it be possible for him to restrain the new owner from displaying it publicly in galleries, shop windows, on a projector, or on television?

Section 109(b) adopts the general principle that the lawful owner of a copy of a work should be able to put

his copy on public display without the consent of the copyright owner. As in cases arising under section 109(a), this does not mean that contractual restrictions on display between a buyer and seller would be unenforceable as a matter of contract law.

The exclusive right of public display granted by section 106(5) would not apply where the owner of a copy wishes to show it directly to the public, as in a gallery or display case, or indirectly, as through an opaque projector. Where the copy itself is intended for projection, as in the case of a photographic slide, negative, or transparency, the public projection of a single image would be permitted as long as the viewers are "present at the place where the copy is located."

On the other hand, section 109(b) takes account of the potentialities of the new communications media, notably television, cable and optical transmission devices, and information storage and retrieval devices, for replacing printed copies with visual images. First of all, the public display of an image of a copyrighted work would not be exempted from copyright control if the copy from which the image was derived were outside the presence of the viewers. In other words, the display of a visual image of a copyrighted work would be an infringement if the image were transmitted by any method (by closed or open circuit television, for example, or by a computer system) from one place to members of the public located elsewhere.

Moreover, the exemption would extend only to public displays that are made "either directly or by the projection of no more than one image at a time." Thus, even where the copy and the viewers are located at the same place, the simultaneous projection of multiple images of the work would not be exempted. For example, where each person in a lecture hall is supplied with a separate viewing apparatus, the copyright owner's permission would generally be required in order to project an image of a work on each individual screen at the same time.

The committee's intention is to preserve the traditional privilege of the owner of a copy to display it directly, but to place reasonable restrictions on the ability to display it indirectly in such a way that the copyright owner's market for reproduction and distribution of copies would be affected. Unless it constitutes a fair use under section 107, or unless one of the special provisions of section 110 or 111 is applicable, projection of more than one image at a time, or transmission of an image to the public over television or other communication channels, would be an infringement for the same reasons that reproduction in copies would be. The concept of "the place where the copy is located" is generally intended to refer to a situation in which the viewers are present in the same physical surroundings as the copy, even though they cannot see the copy directly.

Effect of Mere Possession of Copy or Phonorecord. Subsection (c) of section 109 qualifies the privileges specified in subsections (a) and (b) by making clear that they do not apply to someone who merely possesses a copy or phonorecord without having acquired ownership of it. Acquisition of an object embodying a copyrighted work by rental, lease, loan, or bailment carries with it no privilege to dispose of the copy under section 109(a) or to display it publicly under section 109(b). To cite a familiar example, a person who has rented a print of a motion picture from the copyright owner would have no right to rent it to someone else without the owner's permission.

Burden of Proof in Infringement Actions. During the course of its deliberations on this section, the Committee's attention was directed to a recent court decision holding that the plaintiff in an infringement action had the burden of establishing that the allegedly infringing copies in the defendant's possession were not lawfully made or acquired under section 27 of the present law [section 27 of former title 17]. *American International Pictures, Inc. v. Foreman*, 400 F.Supp. 928 (S.D. Alabama 1975). The Committee believes that the court's decision, if followed, would place a virtually impossible burden

on copyright owners. The decision is also inconsistent with the established legal principle that the burden of proof should not be placed upon a litigant to establish facts particularly within the knowledge of his adversary. The defendant in such actions clearly has the particular knowledge of how possession of the particular copy was acquired, and should have the burden of providing this evidence to the court. It is the intent of the Committee, therefore, that in an action to determine whether a defendant is entitled to the privilege established by section 109(a) and (b), the burden of proving whether a particular copy was lawfully made or acquired should rest on the defendant.

REFERENCES IN TEXT

The date of the enactment of the Computer Software Rental Amendments Act of 1990, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 101-650, which was approved Dec. 1, 1990.

The first section of the Clayton Act, referred to in subsec. (b)(3), is classified to section 12 of Title 15, Commerce and Trade.

Section 5 of the Federal Trade Commission Act, referred to in subsec. (b)(3), is classified to section 45 of Title 15.

AMENDMENTS

1997—Subsec. (b)(2)(B). Pub. L. 105-80 substituted “Register of Copyrights considers appropriate” for “Register of Copyright considers appropriate”.

1994—Subsec. (a). Pub. L. 103-465 inserted at end “Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright or, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—

“(1) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or

“(2) the date of the receipt of actual notice served under section 104A(d)(2)(B), whichever occurs first.”

1990—Subsec. (b)(1). Pub. L. 101-650, §802(2), added par. (1) and struck out former par. (1) which read as follows: “Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording and in the musical works embodied therein, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution.”

Subsec. (b)(2), (3). Pub. L. 101-650, §802(1), (2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b)(4). Pub. L. 101-650, §802(3), added par. (4) and struck out former par. (4) which read as follows: “Any person who distributes a phonorecord in violation of clause (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.”

Pub. L. 101-650, §802(1), redesignated par. (3) as (4).

Subsec. (e). Pub. L. 101-650, §803, added subsec. (e).

1988—Subsec. (d). Pub. L. 100-617 substituted “(a) and (c)” for “(a) and (b)” and “copyright” for “coyright”.

1984—Subsecs. (b) to (d). Pub. L. 98-450 added subsec. (b) and redesignated existing subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 804 of title VIII of Pub. L. 101-650, as amended by Pub. L. 103-465, title V, §511, Dec. 8, 1994, 108 Stat. 4974, provided that:

“(a) IN GENERAL.—Subject to subsection (b), this title [amending this section and enacting provisions set out as notes under sections 101 and 205 of this title] and the amendments made in section 802 [amending this section] shall take effect on the date of the enactment of this Act [Dec. 1, 1990]. The amendment made by section 803 [amending this section] shall take effect one year after such date of enactment.

“(b) PROSPECTIVE APPLICATION.—Section 109(b) of title 17, United States Code, as amended by section 802 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act [Dec. 1, 1990], to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.

“(c) TERMINATION.—The amendments made by section 803 shall not apply to public performances or displays that occur on or after October 1, 1995.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4 of Pub. L. 98-450, as amended by Pub. L. 100-617, §1, Nov. 5, 1988, 102 Stat. 3194; Pub. L. 103-182, title III, §332, Dec. 8, 1993, 107 Stat. 2114, provided that:

“(a) The amendments made by this Act [amending this section and section 115 of this title and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [Oct. 4, 1984].

“(b) The provisions of section 109(b) of title 17, United States Code, as added by section 2 of this Act, shall not affect the right of an owner of a particular phonorecord of a sound recording, who acquired such ownership before the date of the enactment of this Act [Oct. 4, 1984], to dispose of the possession of that particular phonorecord on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act.”

[Amendment by Pub. L. 103-182 to section 4 of Pub. L. 98-450, set out above, effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 335 of Pub. L. 103-182, set out as an Effective Date of 1993 Amendment note under section 1052 of Title 15, Commerce and Trade.]

EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT

Pub. L. 105-304, title I, §104, Oct. 28, 1998, 112 Stat. 2876, provided that:

“(a) EVALUATION BY THE REGISTER OF COPYRIGHTS AND THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate—

“(1) the effects of the amendments made by this title [enacting chapter 12 of this title and amending sections 101, 104, 104A, 411, and 507 of this title] and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

“(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

“(b) REPORT TO CONGRESS.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not later than 24 months after the date of the enactment of this Act [Oct. 28, 1998], submit to the Congress a joint report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.”

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 106, 501, 511 of this title; title 18 section 2319.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if—

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for—

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions;

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(A)¹ a direct charge is made to see or hear the transmission; or

(B)² the transmission thus received is further transmitted to the public;

(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2,000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for

¹ So in original. Probably should be "(i)".

² So in original. Probably should be "(ii)".

no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(iii) no direct charge is made to see or hear the transmission or retransmission;

(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, or of the audiovisual or other devices utilized in such performance, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is

made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111(f));

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8)(iii), *Provided*, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization; and

(10) notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.

(Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2549; Pub. L. 97–366, §3, Oct. 25, 1982, 96 Stat. 1759; Pub. L. 105–80, §12(a)(6), Nov. 13, 1997, 111 Stat. 1534; Pub. L. 105–298, title II, §202, Oct. 27, 1998, 112 Stat. 2830.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Clauses (1) through (4) of section 110 deal with performances and exhibitions that are now generally exempt under the “for profit” limitation or other provisions of the copyright law, and that are specifically exempted from copyright liability under this legislation. Clauses (1) and (2) between them are intended to cover all of the various methods by which performances or displays in the course of systematic instruction take place.

Face-to-Face Teaching Activities. Clause (1) of section 110 is generally intended to set out the conditions

under which performances or displays, in the course of instructional activities other than educational broadcasting, are to be exempted from copyright control. The clause covers all types of copyrighted works, and exempts their performance or display “by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution,” where the activities take place “in a classroom or similar place devoted to instruction.”

There appears to be no need for a statutory definition of “face-to-face” teaching activities to clarify the scope of the provision. “Face-to-face teaching activities” under clause (1) embrace instructional performances and displays that are not “transmitted.” The concept does not require that the teacher and students be able to see each other, although it does require their simultaneous presence in the same general place. Use of the phrase “in the course of face-to-face teaching activities” is intended to exclude broadcasting or other transmissions from an outside location into classrooms, whether radio or television and whether open or closed circuit. However, as long as the instructor and pupils are in the same building or general area, the exemption would extend to the use of devices for amplifying or reproducing sound and for projecting visual images. The “teaching activities” exempted by the clause encompass systematic instruction of a very wide variety of subjects, but they do not include performances or displays, whatever their cultural value or intellectual appeal, that are given for the recreation or entertainment of any part of their audience.

Works Affected.—Since there is no limitation on the types of works covered by the exemption, teachers or students would be free to perform or display anything in class as long as the other conditions of the clause are met. They could read aloud from copyrighted text material, act out a drama, play or sing a musical work, perform a motion picture or filmstrip, or display text or pictorial material to the class by means of a projector. However, nothing in this provision is intended to sanction the unauthorized reproduction of copies or phonorecords for the purpose of classroom performance or display, and the clause contains a special exception dealing with performances from unlawfully made copies of motion pictures and other audiovisual works, to be discussed below.

Instructors or Pupils.—To come within clause (1), the performance or display must be “by instructors or pupils,” thus ruling out performances by actors, singers, or instrumentalists brought in from outside the school to put on a program. However, the term “instructors” would be broad enough to include guest lecturers if their instructional activities remain confined to classroom situations. In general, the term “pupils” refers to the enrolled members of a class.

Nonprofit Educational Institution.—Clause (1) makes clear that it applies only to the teaching activities “of a nonprofit educational institution,” thus excluding from the exemption performances or displays in profit-making institutions such as dance studios and language schools.

Classroom or Similar Place.—The teaching activities exempted by the clause must take place “in a classroom or similar place devoted to instruction.” For example, performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class, would fall outside the scope of clause (1), although in some cases they might be exempted by clause (4) of section 110. The “similar place” referred to in clause (1) is a place which is “devoted to instruction” in the same way a classroom is; common examples would include a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium, or the auditorium itself, if it is actually used as a classroom for systematic instructional activities.

Motion Pictures and Other Audiovisual Works.—The final provision of clause (1) deals with the special problem of performances from unlawfully-made copies of

motion pictures and other audiovisual works. The exemption is lost where the copy being used for a classroom performance was “not lawfully made under this title” and the person responsible for the performance knew or had reason to suspect as much. This special exception to the exemption would not apply to performances from lawfully-made copies, even if the copies were acquired from someone who had stolen or converted them, or if the performances were in violation of an agreement. However, though the performance would be exempt under section 110(1) in such cases, the copyright owner might have a cause of action against the unauthorized distributor under section 106(3), or against the person responsible for the performance, for breach of contract.

Projection Devices.—As long as there is no transmission beyond the place where the copy is located, both section 109(b) and section 110(1) would permit the classroom display of a work by means of any sort of projection device or process.

Instructional Broadcasting. *Works Affected.*—The exemption for instructional broadcasting provided by section 110(2) would apply only to “performance of a nondramatic literary or musical work or display of a work.” Thus, the copyright owner’s permission would be required for the performance on educational television or radio of a dramatic work, of a dramatico-musical work such as an opera or musical comedy, or of a motion picture. Since, as already explained, audiovisual works such as filmstrips are equated with motion pictures, their sequential showing would be regarded as a performance rather than a display and would not be exempt under section 110(2). The clause is not intended to limit in any way the copyright owner’s exclusive right to make dramatizations, adaptations, or other derivative works under section 106(2). Thus, for example, a performer could read a nondramatic literary work aloud under section 110(2), but the copyright owner’s permission would be required for him to act it out in dramatic form.

Systematic Instructional Activities.—Under section 110(2) a transmission must meet three specified conditions in order to be exempted from copyright liability. The first of these, as provided by subclause (A), is that the performance or display must be “a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution.” The concept of “systematic instructional activities” is intended as the general equivalent of “curriculums,” but it could be broader in a case such as that of an institution using systematic teaching methods not related to specific course work. A transmission would be a regular part of these activities if it is in accordance with the pattern of teaching established by the governmental body or institution. The use of commercial facilities, such as those of a cable service, to transmit the performance or display, would not affect the exemption as long as the actual performance or display was for nonprofit purposes.

Content of Transmission.—Subclause (B) requires that the performance or display be directly related and of material assistance to the teaching content of the transmission.

Intended Recipients.—Subclause (C) requires that the transmission is made primarily for:

- (i) Reception in classrooms or similar places normally devoted to instruction, or
- (ii) Reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or
- (iii) Reception by officers or employees of governmental bodies as a part of their official duties or employment.

In all three cases, the instructional transmission need only be made “primarily” rather than “solely” to the specified recipients to be exempt. Thus, the transmission could still be exempt even though it is capable of reception by the public at large. Conversely, it would

not be regarded as made “primarily” for one of the required groups of recipients if the principal purpose behind the transmission is reception by the public at large, even if it is cast in the form of instruction and is also received in classrooms. Factors to consider in determining the “primary” purpose of a program would include its subject matter, content, and the time of its transmission.

Paragraph (i) of subclause (C) generally covers what are known as “in-school” broadcasts, whether open- or closed-circuit. The reference to “classrooms or similar places” here is intended to have the same meaning as that of the phrase as used in section 110(1). The exemption in paragraph (ii) is intended to exempt transmissions providing systematic instruction to individuals who cannot be reached in classrooms because of “their disabilities or other special circumstances.” Accordingly, the exemption is confined to instructional broadcasting that is an adjunct to the actual classwork of nonprofit schools or is primarily for people who cannot be brought together in classrooms such as preschool children, displaced workers, illiterates, and shut-ins.

There has been some question as to whether or not the language in this section of the bill is intended to include instructional television college credit courses. These telecourses are aimed at undergraduate and graduate students in earnest pursuit of higher educational degrees who are unable to attend daytime classes because of daytime employment, distance from campus, or some other intervening reason. So long as these broadcasts are aimed at regularly enrolled students and conducted by recognized higher educational institutions, the committee believes that they are clearly within the language of section 110(2)(C)(ii). Like night school and correspondence courses before them, these telecourses are fast becoming a valuable adjunct of the normal college curriculum.

The third exemption in subclause (C) is intended to permit the use of copyrighted material, in accordance with the other conditions of section 110(2), in the course of instructional transmissions for Government personnel who are receiving training “as a part of their official duties or employment.”

Religious Services. The exemption in clause (3) of section 110 covers performances of a nondramatic literary or musical work, and also performances “of dramatico-musical works of a religious nature”; in addition, it extends to displays of works of all kinds. The exemption applies where the performance or display is “in the course of services at a place of worship or other religious assembly.” The scope of the clause does not cover the sequential showing of motion pictures and other audiovisual works.

The exemption, which to some extent has its counterpart in sections 1 and 104 of the present law [sections 1 and 104 of former title 17], applies to dramatico-musical works “of a religious nature.” The purpose here is to exempt certain performances of sacred music that might be regarded as “dramatic” in nature, such as oratorios, cantatas, musical settings of the mass, choral services, and the like. The exemption is not intended to cover performances of secular operas, musical plays, motion pictures, and the like, even if they have an underlying religious or philosophical theme and take place “in the course of [religious] services.”

To be exempted under section 110(3) a performance or display must be “in the course of services,” thus excluding activities at a place of worship that are for social, educational, fund raising, or entertainment purposes. Some performances of these kinds could be covered by the exemption in section 110(4), discussed next. Since the performance or display must also occur “at a place of worship or other religious assembly,” the exemption would not extend to religious broadcasts or other transmissions to the public at large, even where the transmissions were sent from the place of worship. On the other hand, as long as services are being conducted before a religious gathering, the exemption would apply if they were conducted in places such as auditoriums, outdoor theaters, and the like.

Certain Other Nonprofit Performances. In addition to the educational and religious exemptions provided by clauses (1) through (3) of section 110, clause (4) contains a general exception to the exclusive right of public performance that would cover some, though not all, of the same ground as the present “for profit” limitation.

Scope of Exemption.—The exemption in clause (4) applies to the same general activities and subject matter as those covered by the “for profit” limitation today: public performances of nondramatic literary and musical works. However, the exemption would be limited to public performances given directly in the presence of an audience whether by means of living performers, the playing of phonorecords, or the operation of a receiving apparatus, and would not include a “transmission to the public.” Unlike the clauses (1) through (3) and (5) of section 110, but like clauses (6) through (8), clause (4) applies only to performing rights in certain works, and does not affect the exclusive right to display a work in public.

No Profit Motive.—In addition to the other conditions specified by the clause, the performance must be “without any purpose of direct or indirect commercial advantage.” This provision expressly adopts the principle established by the court decisions construing the “for profit” limitation: that public performances given or sponsored in connection with any commercial or profit-making enterprises are subject to the exclusive rights of the copyright owner even though the public is not charged for seeing or hearing the performance.

No Payment for Performance.—An important condition for this exemption is that the performance be given “without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers.” The basic purpose of this requirement is to prevent the free use of copyrighted material under the guise of charity where fees or percentages are paid to performers, promoters, producers, and the like. However, the exemption would not be lost if the performers, directors, or producers of the performance, instead of being paid directly “for the performance,” are paid a salary for duties encompassing the performance. Examples are performances by a school orchestra conducted by a music teacher who receives an annual salary, or by a service band whose members and conductors perform as part of their assigned duties and who receive military pay. The committee believes that performances of this type should be exempt, assuming the other conditions in clause (4) are met, and has not adopted the suggestion that the word “salary” be added to the phrase referring to the “payment of any fee or other compensation.”

Admission Charge.—Assuming that the performance involves no profit motive and no one responsible for it gets paid a fee, it must still meet one of two alternative conditions to be exempt. As specified in subclauses (A) and (B) of section 110(4), these conditions are: (1) that no direct or indirect admission charge is made, or (2) that the net proceeds are “used exclusively for educational, religious, or charitable purposes and not for private financial gain.”

Under the second of these conditions, a performance meeting the other conditions of clause (4) would be exempt even if an admission fee is charged, provided any amounts left “after deducting the reasonable costs of producing the performance” are used solely for bona fide educational, religious, or charitable purposes. In cases arising under this second condition and as provided in subclause (B), where there is an admission charge, the copyright owner is given an opportunity to decide whether and under what conditions the copyrighted work should be performed; otherwise, owners could be compelled to make involuntary donations to the fund-raising activities of causes to which they are opposed. The subclause would thus permit copyright owners to prevent public performances of their works under section 110(4)(B) by serving notice of objection, with the reasons therefor, at least seven days in advance.

Mere Reception in Public. Unlike the first four clauses of section 110, clause (5) is not to any extent a

counterpart of the “for profit” limitation of the present statute. It applies to performances and displays of all types of works, and its purpose is to exempt from copyright liability anyone who merely turns on, in a public place, an ordinary radio or television receiving apparatus of a kind commonly sold to members of the public for private use.

The basic rationale of this clause is that the secondary use of the transmission by turning on an ordinary receiver in public is so remote and minimal that no further liability should be imposed. In the vast majority of these cases no royalties are collected today, and the exemption should be made explicit in the statute. This clause has nothing to do with cable television systems and the exemptions would be denied in any case where the audience is charged directly to see or hear the transmission.

With respect to section 110(5), the conference substitute conforms to the language in the Senate bill. It is the intent of the conferees that a small commercial establishment of the type involved in *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151 (1975), [95 S.Ct. 2040, 45 L.Ed.2d 84], which merely augmented a home-type receiver and which was not of sufficient size to justify, as a practical matter, a subscription to a commercial background music service, would be exempt. However, where the public communication was by means of something other than a home-type receiving apparatus, or where the establishment actually makes a further transmission to the public, the exemption would not apply.

On June 17, 1975, the Supreme Court handed down a decision in *Twentieth Century Music Corp. v. Aiken*, 95 S.Ct. 2040 [422 U.S. 151, 45 L.Ed.2d 84], that raised fundamental questions about the proper interpretation of section 110(5). The defendant, owner and operator of a fast-service food shop in downtown Pittsburgh, had “a radio with outlets to four speakers in the ceiling,” which he apparently turned on and left on throughout the business day. Lacking any performing license, he was sued for copyright infringement by two ASCAP members. He lost in the District Court, won a reversal in the Third Circuit Court of Appeals, and finally prevailed, by a margin of 7-2, in the Supreme Court.

The *Aiken* decision is based squarely on the two Supreme Court decisions dealing with cable television. In *Fortnightly Corp. v. United Artists*, 392 U.S. 390 [88 S.Ct. 2084, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 393 U.S. 902, 21 L.Ed.2d 190], and again in *Teleprompter Corp. v. CBS*, 415 U.S. 394 [94 S.Ct. 1129, 39 L.Ed.2d 415], the Supreme Court has held that a CATV operator was not “performing” within the meaning of the 1909 statute, when it picked up broadcast signals off the air and retransmitted them to subscribers by cable. The *Aiken* decision extends this interpretation of the scope of the 1909 statute’s right of “public performance for profit” to a situation outside the CATV context and, without expressly overruling the decision in *Buck v. Jewell-LaSalle Realty Co.*, 283 U.S. 191 (1931) [51 S.Ct. 410, 75 L.Ed. 971], effectively deprives it of much meaning under the present law. For more than forty years the *Jewell-LaSalle* rule was thought to require a business establishment to obtain copyright licenses before it could legally pick up any broadcasts off the air and retransmit them to its guests and patrons. As reinterpreted by the *Aiken* decision, the rule of *Jewell-LaSalle* applies only if the broadcast being retransmitted was itself unlicensed.

The majority of the Supreme Court in the *Aiken* case based its decision on a narrow construction of the word “perform” in the 1909 statute. This basis for the decision is completely overturned by the present bill and its broad definition of “perform” in section 101. The Committee has adopted the language of section 110(5) with an amendment expressly denying the exemption in situations where “the performance or display is further transmitted beyond the place where the receiving apparatus is located”; in doing so, it accepts the traditional, pre-*Aiken*, interpretation of the *Jewell-LaSalle* decision, under which public communication by means

other than a home receiving set, or further transmission of a broadcast to the public, is considered an infringing act.

Under the particular fact situation in the *Aiken* case, assuming a small commercial establishment and the use of a home receiver with four ordinary loudspeakers grouped within a relatively narrow circumference from the set, it is intended that the performances would be exempt under clause (5). However, the Committee considers this fact situation to represent the outer limit of the exemption, and believes that the line should be drawn at that point. Thus, the clause would exempt small commercial establishments whose proprietors merely bring onto their premises standard radio or television equipment and turn it on for their customers’ enjoyment, but it would impose liability where the proprietor has a commercial “sound system” installed or converts a standard home receiving apparatus (by augmenting it with sophisticated or extensive amplification equipment) into the equivalent of a commercial sound system. Factors to consider in particular cases would include the size, physical arrangement, and noise level of the areas within the establishment where the transmissions are made audible or visible, and the extent to which the receiving apparatus is altered or augmented for the purpose of improving the aural or visual quality of the performance for individual members of the public using those areas.

Agricultural Fairs. The Committee also amended clause (6) of section 110 of S. 22 as adopted by the Senate. As amended, the provision would exempt “performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization.” The exemption extends only to the governmental body or nonprofit organization sponsoring the fair; the amendment makes clear that, while such a body or organization cannot itself be held vicariously liable for infringements by concessionaires at the fair, the concessionaires themselves enjoy no exemption under the clause.

Retail Sale of Phonorecords. Clause (7) provides that the performance of a nondramatic musical work or of a sound recording by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, is not an infringement of copyright. This exemption applies only if the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring.

Transmission to Handicapped Audiences. The new clause (8) of subsection 110, which had been added to S. 22 by the Senate Judiciary Committee when it reported the bill on November 20, 1975, and had been adopted by the Senate on February 19, 1976, was substantially amended by the Committee. Under the amendment, the exemption would apply only to performances of “nondramatic literary works” by means of “a transmission specifically designed for and primarily directed to” one or the other of two defined classes of handicapped persons: (1) “blind or other handicapped persons who are unable to read normal printed material as a result of their handicap” or (2) “deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission.” Moreover, the exemption would be applicable only if the performance is “without any purpose of direct or indirect commercial advantage,” and if the transmission takes place through government facilities or through the facilities of a non-commercial educational broadcast station, a radio subcarrier authorization (SCA), or a cable system.

AMENDMENTS

1998—Pub. L. 105-298, §202(a)(2), inserted concluding provisions.

Par. (5). Pub. L. 105-298, §202(a)(1), designated existing provisions as subpar. (A), inserted “except as provided

in subparagraph (B),” after “(A)”, and added subpar. (B).

Par. (7). Pub. L. 105-298, § 202(b), inserted “or of the audiovisual or other devices utilized in such performance,” after “phonorecords of the work,”.

1997—Par. (8). Pub. L. 105-80, § 12(a)(6)(A), substituted semicolon for period at end.

Par. (9). Pub. L. 105-80, § 12(a)(6)(B), substituted “; and” for period at end.

Par. (10). Pub. L. 105-80, § 12(a)(6)(C), substituted “paragraph (4)” for “paragraph 4 above”.

1982—Par. (10). Pub. L. 97-366 added par. (10).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-298 effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105-298, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-366 effective 30 days after Oct. 25, 1982, see section 2 of Pub. L. 97-366, set out as a note under section 708 of this title.

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 111, 112, 118, 501, 504, 511 of this title; title 18 section 2319.

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED.—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions;

(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or

(5) the secondary transmission is not made by a cable system but is made by a govern-

mental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) SECONDARY TRANSMISSION OF PRIMARY TRANSMISSION TO CONTROLLED GROUP.—Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided, however*, That such secondary transmission is not actionable as an act of infringement if—

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission; and

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection and section 114(d), secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisions of clause (1) of this subsection and subject to the provi-

sions of subsection (e) of this section, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided*, That the research company has obtained the prior consent of the advertiser who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: *And provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) **COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.**—

(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semi-annual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the

number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable under paragraphs (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and

(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total \$80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which \$80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$80,000 but less than \$160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to \$80,000; and (ii) 1 per centum of any gross receipts in excess of \$80,000 but less than \$160,000, regardless of the number of distant signal equivalents, if any.

(2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.

(3) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (4), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (1)(A);

(C) any such owner whose work was included in nonnetwork programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(4) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the Librarian

of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(e) NONSIMULTANEOUS SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, unless—

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility, (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the video-

tape, and (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and

(E) such owner or officer places or causes each such affidavit, and affidavits received pursuant to clause (2)(C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this subclause shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with clause (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, to another cable system in any of those three territories, if—

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotape is transferred complies with clause (1)(A), (B), (C)(i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with clause (1)(D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term "videotape", and each of its variant forms, means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the

Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) DEFINITIONS.—As used in this section, the following terms and their variant forms mean the following:

A "primary transmission" is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a "cable system" not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however*, That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

The "local service area of a primary transmitter", in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. In the case of a low power television station, as defined by the rules and regulations of the Federal Communications Commission, the "local service area of a primary transmitter" com-

prises the area within 35 miles of the transmitter site, except that in the case of such a station located in a standard metropolitan statistical area which has one of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20 miles. The “local service area of a primary transmitter”, in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

A “distant signal equivalent” is the value assigned to the secondary transmission of any nonnetwork television programing carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programing. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonnetwork programing so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program; where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specialty programing rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational sta-

tions set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

A “network station” is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programing supplied by such networks for a substantial part of that station’s typical broadcast day.

An “independent station” is a commercial television broadcast station other than a network station.

A “noncommercial educational station” is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2550; Pub. L. 99-397, §§ 1, 2(a), (b), Aug. 27, 1986, 100 Stat. 848; Pub. L. 100-667, title II, § 202(1), Nov. 16, 1988, 102 Stat. 3949; Pub. L. 101-318, § 3(a), July 3, 1990, 104 Stat. 288; Pub. L. 103-198, § 6(a), Dec. 17, 1993, 107 Stat. 2311; Pub. L. 103-369, § 3, Oct. 18, 1994, 108 Stat. 3480; Pub. L. 104-39, § 5(b), Nov. 1, 1995, 109 Stat. 348.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Introduction and General Summary. The complex and economically important problem of “secondary transmissions” is considered in section 111. For the most part, the section is directed at the operation of cable television systems and the terms and conditions of their liability for the retransmission of copyrighted works. However, other forms of secondary transmissions are also considered, including apartment house and hotel systems, wired instructional systems, common carriers, nonprofit “boosters” and translators, and secondary transmissions of primary transmissions to controlled groups.

Cable television systems are commercial subscription services that pick up broadcasts of programs originated by others and retransmit them to paying subscribers. A typical system consists of a central antenna which receives and amplifies television signals and a network of cables through which the signals are transmitted to the receiving sets of individual subscribers. In addition to an installation charge, the subscribers pay a monthly charge for the basic service averaging about six dollars. A large number of these systems provide automated programing. A growing number of CATV systems also originate programs, such as movies and sports, and charge additional fees for this service (pay-cable).

The number of cable systems has grown very rapidly since their introduction in 1950, and now total about 3,450 operating systems, servicing 7,700 communities. Systems currently in operation reach about 10.8 million homes. It is reported that the 1975 total subscriber revenues of the cable industry were approximately \$770 million.

Pursuant to two decisions of the Supreme Court (*Fortnightly Corp. v. United Artist Television, Inc.*, 392 U.S. 390 (1968) [88 S.Ct. 2084, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 393 U.S. 902, 21 L.Ed.2d 190], and *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974)) [94 S.Ct. 1129, 39 L.Ed.2d 415], under the 1909 copyright law, the cable television industry has not been paying copyright royalties for its retransmission of over-the-air broadcast signals. Both decisions urged the Congress, however, to consider and determine the scope and extent of such liability in the pending revision bill.

The difficult problem of determining the copyright liability of cable television systems has been before the

Congress since 1965. In 1967, this Committee sought to address and resolve the issues in H.R. 2512, an early version of the general revision bill (see H.R. Rep. No. 83, 90th Cong., 1st Sess.). However, largely because of the cable-copyright impasse, the bill died in the Senate.

The history of the attempts to find a solution to the problem since 1967 has been explored thoroughly in the voluminous hearings and testimony on the general revision bill, and has also been succinctly summarized by the Register of Copyrights in her Second Supplementary Report, Chapter V.

The Committee now has before it the Senate bill which contains a series of detailed and complex provisions which attempt to resolve the question of the copyright liability of cable television systems. After extensive consideration of the Senate bill, the arguments made during and after the hearings, and of the issues involved, this Committee has also concluded that there is no simple answer to the cable-copyright controversy. In particular, any statutory scheme that imposes copyright liability on cable television systems must take account of the intricate and complicated rules and regulations adopted by the Federal Communications Commission to govern the cable television industry. While the Committee has carefully avoided including in the bill any provisions which would interfere with the FCC's rules or which might be characterized as affecting "communications policy", the Committee has been cognizant of the interplay between the copyright and the communications elements of the legislation.

We would, therefore, caution the Federal Communications Commission, and others who make determinations concerning communications policy, not to rely upon any action of this Committee as a basis for any significant changes in the delicate balance of regulation in areas where the Congress has not resolved the issue. Specifically, we would urge the Federal Communications Commission to understand that it was not the intent of this bill to touch on issues such as pay cable regulation or increased use of imported distant signals. These matters are ones of communications policy and should be left to the appropriate committees in the Congress for resolution.

In general, the Committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. The Committee recognizes, however, that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined to maintain the basic principle of the Senate bill to establish a compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.

The compulsory license is conditioned, however, on certain requirements and limitations. These include compliance with reporting requirements, payment of the royalty fees established in the bill, a ban on the substitution or deletion of commercial advertising, and geographic limits on the compulsory license for copyrighted programs broadcast by Canadian or Mexican stations. Failure to comply with these requirements and limitations subjects a cable system to a suit for copyright infringement and the remedies provided under the bill for such actions.

In setting a royalty fee schedule for the compulsory license, the Committee determined that the initial schedule should be established in the bill. It recognized, however, that adjustments to the schedule would be required from time to time. Accordingly, the Copyright Royalty Commission, established in chapter 8 [§801 et seq. of this title], is empowered to make the adjustments in the initial rates, at specified times, based on standards and conditions set forth in the bill.

In setting an initial fee schedule, the Senate bill based the royalty fee on a sliding scale related to the

gross receipts of a cable system for providing the basic retransmission service and rejected a statutory scheme that would distinguish between "local" and "distant" signals. The Committee determined, however, that there was no evidence that the retransmission of "local" broadcast signals by a cable operator threatens the existing market for copyright program owners. Similarly, the retransmission of network programming, including network programming which is broadcast in "distant" markets, does not injure the copyright owner. The copyright owner contracts with the network on the basis of his programming reaching all markets served by the network and is compensated accordingly.

By contrast, their retransmission of distant non-network programming by cable systems causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market. It is also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues. For these reasons, the Committee has concluded that the copyright liability of cable television systems under the compulsory license should be limited to the retransmission of distant non-network programming.

In implementing this conclusion, the Committee generally followed a proposal submitted by the cable and motion picture industries, the two industries most directly affected by the establishment of copyright royalties for cable television systems. Under the proposal, the royalty fee is determined by a two step computation. First, a value called a "distant signal equivalent" is assigned to all "distant" signals. Distant signals are defined as signals retransmitted by a cable system, in whole or in part, outside the local service area of the primary transmitter. Different values are assigned to independent, network, and educational stations because of the different amounts of viewing of non-network programming carried by such stations. For example, the viewing of non-network programs on network stations is considered to approximate 25 percent. These values are then combined and a scale of percentages is applied to the cumulative total.

The Committee also considered various proposals to exempt certain categories of cable systems from royalty payments altogether. The Committee determined that the approach of the Senate bill to require some payment by every cable system is sound, but established separate fee schedules for cable systems whose gross receipts for the basic retransmission service do not exceed either \$80,000 or \$160,000 semiannually. It is the Committee's view that the fee schedules adopted for these systems are now appropriate, based on their relative size and the services performed.

All the royalty payments required under the bill are paid on a semiannual basis to the Register of Copyrights. Each year they are distributed by the Copyright Royalty Commission to those copyright owners who may validly claim that their works were the subject of distant non-network retransmissions by cable systems.

Based on current estimates supplied to the Committee, the total royalty fees paid under the initial schedule established in the bill should approximate \$8.7 million. Compared with the present number of cable television subscribers, calculated at 10.8 million, copyright payments under the bill would therefore approximate 81 cents per subscriber per year. The Committee believes that such payments are modest and will not retard the orderly development of the cable television industry or the service it provides to its subscribers.

Analysis of Provisions. Throughout section 111, the operative terms are "primary transmission" and "secondary transmission." These terms are defined in subsection (f) entirely in relation to each other. In any particular case, the "primary" transmitter is the one whose signals are being picked up and further transmitted by a "secondary" transmitter which in turn, is someone engaged in "the further transmitting of a primary transmission simultaneously with the primary

transmission.” With one exception provided in subsection (f) and limited by subsection (e), the section does not cover or permit a cable system, or indeed any person, to tape or otherwise record a program off-the-air and later to transmit the program from the tape or record to the public. The one exception involves cable systems located outside the continental United States, but not including cable systems in Puerto Rico, or, with limited exceptions, Hawaii. These systems are permitted to record and retransmit programs under the compulsory license, subject to the restrictive conditions of subsection (e), because off-the-air signals are generally not available in the offshore areas.

General Exemptions. Certain secondary transmissions are given a general exemption under clause (1) of section 111(a). The first of these applies to secondary transmissions consisting “entirely of the relaying, by the management of a hotel, apartment house, or similar establishment” of a transmission to the private lodgings of guests or residents and provided “no direct charge is made to see or hear the secondary transmission.”

The exemption would not apply if the secondary transmission consists of anything other than the mere relay of ordinary broadcasts. The cutting out of advertising, the running in of new commercials, or any other change in the signal relayed would subject the secondary transmitter to full liability. Moreover, the term “private lodgings” is limited to rooms used as living quarters or for private parties, and does not include dining rooms, meeting halls, theatres, ballrooms, or similar places that are outside of a normal circle of a family and its social acquaintances. No special exception is needed to make clear that the mere placing of an ordinary radio or television set in a private hotel room does not constitute an infringement.

Secondary Transmissions of Instructional Broadcasts. Clause (2) of section 111(a) is intended to make clear that an instructional transmission within the scope of section 110(2) is exempt whether it is a “primary transmission” or a “secondary transmission.”

Carriers. The general exemption under section 111 extends to secondary transmitters that act solely as passive carriers. Under clause (3), a carrier is exempt if it “has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission.” For this purpose its activities must “consist solely of providing wires, cables, or other communications channels for the use of others.”

Clause (4) would exempt the activities of secondary transmitters that operate on a completely nonprofit basis. The operations of nonprofit “translators” or “boosters,” which do nothing more than amplify broadcast signals and retransmit them to everyone in an area for free reception, would be exempt if there is no “purpose of direct or indirect commercial advantage,” and if there is no charge to the recipients “other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.” This exemption does not apply to a cable television system.

Secondary Transmissions of Primary Transmissions to Controlled Group. Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display is actionable as an act of infringement if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public. Examples of transmissions not intended for the general public are background music services such as MUZAK, closed circuit broadcasts to theatres, pay television (STV) or pay-cable.

The Senate bill contains a provision, however, stating that the secondary transmission does not constitute an act of infringement if the carriage of the signals comprising the secondary transmission is required under the rules and regulations of the FCC. The exclusive purpose of this provision is to exempt a cable sys-

tem from copyright liability if the FCC should require cable systems to carry to their subscribers a “scrambled” pay signal of a subscription television station.

The Committee is concerned, however, that the Senate bill is not clearly limited to the situation where a cable system is required by the FCC to carry a “scrambled” pay television signal. The Committee believes that the provision should not include any authority or permission to “unscramble” the signal. Further, the Senate bill does not make clear that the exception would not apply if the primary transmission is made by a cable system or cable system network transmitting its own originated program, *e.g.*, pay-cable. For these reasons, the subsection was amended to provide that the exception would only apply if (1) the primary transmission to a controlled group is made by a broadcast station licensed by the FCC; (2) the carriage of the signal is required by FCC rules and regulations; and (3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

Compulsory License. Section 111(c) establishes the compulsory license for cable systems generally. It provides that, subject to the provisions of clauses (2), (3) and (4), the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the FCC or by an appropriate governmental authority of Canada or Mexico is subject to compulsory licensing upon compliance with the provisions of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules and regulations of the FCC. The compulsory license applies, therefore, to the carriage of over-the-air broadcast signals and is inapplicable to the secondary transmission of any nonbroadcast primary transmission such as a program originated by a cable system or a cable network. The latter would be subject to full copyright liability under other sections of the legislation.

Limitations on the Compulsory License. Sections 111(c)(2), (3) and (4) establish limitations on the scope of the compulsory license, and provide that failure to comply with these limitations subjects a cable system to a suit for infringement and all the remedies provided in the legislation for such actions.

Section 111(c)(2) provides that the “willful or repeated” carriage of signals not permissible under the rules and regulations of the FCC subjects a cable system to full copyright liability. The words “willful or repeated” are used to prevent a cable system from being subjected to severe penalties for innocent or casual acts (“Repeated” does not mean merely “more than once,” of course; rather, it denotes a degree of aggravated negligence which borders on willfulness. Such a condition would not exist in the case of an innocent mistake as to what signals or programs may properly be carried under the FCC’s complicated rules). Section 111(c)(2) also provides that a cable system is subject to full copyright liability where the cable system has not recorded the notice, deposited the statement of account, or paid the royalty fee required by subsection (d). The Committee does not intend, however, that a good faith error by the cable system in computing the amount due would subject it to full liability as an infringer. The Committee expects that in most instances of this type the parties would be able to work out the problem without resort to the courts.

Commercial Substitution. Section 111(c)(3) provides that a cable system is fully subject to the remedies provided in this legislation for copyright infringement if the cable system willfully alters, through changes, deletions, or additions, the content of a particular program or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of the program. In the Committee’s view, any willful deletion, substitution, or insertion of commercial advertisements of any nature by a cable system or changes in the program content of the primary transmission, significantly alters the basic nature of the cable retransmission service, and makes its function

similar to that of a broadcaster. Further, the placement of substitute advertising in a program by a cable system on a "local" signal harms the advertiser and, in turn, the copyright owner, whose compensation for the work is directly related to the size of the audience that the advertiser's message is calculated to reach. On a "distant" signal, the placement of substitute advertising harms the local broadcaster in the distant market because the cable system is then competing for local advertising dollars without having comparable program costs. The Committee has therefore attempted broadly to proscribe the availability of the compulsory license if a cable system substitutes commercial messages. Included in the prohibition are commercial messages and station announcements not only during, but also immediately before or after the program, so as to insure a continuous ban on commercial substitution from one program to another. In one situation, however, the Committee has permitted such substitution when the commercials are inserted by those engaged in television commercial advertising market research. This exception is limited to those situations where the research company has obtained the consent of the advertiser who purchased the original commercial advertisement, the television station whose signal is retransmitted, and the cable system, and provided further that no income is derived from the sale of such commercial time.

Canadian and Mexican Signals. Section 111(c)(4) provides limitations on the compulsory license with respect to foreign signals carried by cable systems from Canada or Mexico. Under the Senate bill, the carriage of any foreign signals by a cable system would have been subject to full copyright liability, because the compulsory license was limited to the retransmission of broadcast stations licensed by the FCC. The Committee recognized, however, that cable systems primarily along the northern and southern border have received authorization from the FCC to carry broadcast signals of certain Canadian and Mexican stations.

In the Committee's view, the authorization by the FCC to a cable system to carry a foreign signal does not resolve the copyright question of the royalty payment that should be made for copyrighted programs originating in the foreign country. The latter raises important international questions of the protection to be accorded foreign copyrighted works in the United States. While the Committee has established a general compulsory licensing scheme for the retransmission of copyrighted works of U.S. nationals, a broad compulsory license scheme for all foreign works does not appear warranted or justified. Thus, for example, if in the future the signal of a British, French, or Japanese station were retransmitted in the United States by a cable system, full copyright liability would apply.

With respect to Canadian and Mexican signals, the Committee found that a special situation exists regarding the carriage of these signals by U.S. cable systems on the northern and southern borders, respectively. The Committee determined, therefore, that with respect to Canadian signals the compulsory license would apply in an area located 150 miles from the U.S.-Canadian border, or south from the border to the 42nd parallel of latitude, whichever distance is greater. Thus the cities of Detroit, Pittsburgh, Cleveland, Green Bay and Seattle would be included within the compulsory license area, while cities such as New York, Philadelphia, Chicago, and San Francisco would be located outside the area.

With respect to Mexican signals, the Commission determined that the compulsory license would apply only in the area in which such signals may be received by a U.S. cable system by means of direct interception of a free space radio wave. Thus, full copyright liability would apply if a cable system were required to use any equipment or device other than a receiving antenna to bring the signal to the community of the cable system.

Further, to take account of those cable systems that are presently carrying or are specifically authorized to carry Canadian or Mexican signals, pursuant to FCC

rules and regulations, and whether or not within the zones established, the Committee determined to grant a compulsory license for the carriage of those specific signals on those cable systems as in effect on April 15, 1976.

The Committee wishes to stress that cable systems operating within these zones are fully subject to the payment of royalty fees under the compulsory license for those foreign signals retransmitted. The copyright owners of the works transmitted may appear before the Copyright Royalty Commission and, pursuant to the provisions of this legislation, file claims to their fair share of the royalties collected. Outside the zones, however, full copyright liability would apply as would all the remedies of the legislation for any act of infringement.

Requirements for a Compulsory License. The compulsory license provided for in section 111(c) is contingent upon fulfillment of the requirements set forth in section 111(d). Subsection (d)(1) directs that at least one month before the commencement of operations, or within 180 days after the enactment of this act [Oct. 19, 1976], whichever is later, a cable system must record in the Copyright Office a notice, including a statement giving the identity and address of the person who owns or operates the secondary transmission service or who has power to exercise primary control over it, together with the name and location of the primary transmitter whose signals are regularly carried by the cable system. Signals "regularly carried" by the system mean those signals which the Federal Communications Commission has specifically authorized the cable system to carry, and which are actually carried by the system on a regular basis. It is also required that whenever the ownership or control or regular signal carriage complement of the system changes, the cable system must within 30 days record any such changes in the Copyright Office. Cable systems must also record such further information as the Register of Copyrights shall prescribe by regulation.

Subsection (d)(2) directs cable systems whose secondary transmissions have been subject to compulsory licensing under subsection (c) to deposit with the Register of Copyrights a semi-annual statement of account. The dates for filing such statements of account and the six-month period which they are to cover are to be determined by the Register of Copyrights after consultation with the Copyright Royalty Commission. In addition to other such information that the Register may prescribe by regulation, the statements of account are to specify the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were carried by the system, the total number of subscribers to the system, and the gross amounts paid to the system for the basic service of providing secondary transmissions. If any non-network television programming was retransmitted by the cable system beyond the local service area of the primary transmitter, pursuant to the rules of the Federal Communications Commission, which under certain circumstances permit the substitution or addition of television signals not regularly carried, the cable system must deposit a special statement of account listing the times, dates, stations and programs involved in such substituted or added carriage.

Copyright Royalty Payments. Subsection (d)(2)(B), (C) and (D) require cable systems to deposit royalty fee payments for the period covered by the statements of account. These payments are to be computed on the basis of specified percentages of the gross receipts from cable subscribers during the period covered by the statement. For purposes of computing royalty payments, only receipts for the basic service of providing secondary transmissions of primary broadcast transmitters are to be considered. Other receipts from subscribers, such as those for pay-cable services or installation charges, are not included in gross receipts.

Subsection (d)(2)(B) provides that, except in the case of a cable system that comes within the gross receipts

limitations of subclauses (C) and (D), the royalty fee is computed in the following manner:

Every cable system pays .675 of 1 percent of its gross receipts for the privilege of retransmitting distant non-network programming, such amount to be applied against the fee, if any, payable under the computation for “distant signal equivalents.” The latter are determined by adding together the values assigned to the actual number of distant television stations carried by a cable system. The purpose of this initial rate, applicable to all cable systems in this class, is to establish a basic payment, whether or not a particular cable system elects to transmit distant non-network programming. It is not a payment for the retransmission of purely “local” signals, as is evident from the provision that it applies to and is deductible from the fee payable for any “distant signal equivalents.”

The remaining provisions of subclause (B) establish the following rates for “distant signal equivalents:”

The rate from zero to one distant signal equivalent is .675 of 1 percent of gross subscriber revenues. An additional .425 of 1 percent of gross subscriber revenues is to be paid for each of the second, third and fourth distant signal equivalents that are carried. A further payment of .2 of 1 percent of gross subscriber revenues is to be made for each distant signal equivalent after the fourth. Any fraction of a distant signal equivalent is to be computed at its fractional value and where a cable system is located partly within and partly without the local service area of a primary transmitter, the gross receipts subject to the percentage payment are limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter.

Pursuant to the foregoing formula, copyright payments as a percentage of gross receipts increase as the number of distant television signals carried by a cable system increases. Because many smaller cable systems carry a large number of distant signals, especially those located in areas where over-the-air television service is sparse, and because smaller cable systems may be less able to shoulder the burden of copyright payments than larger systems, the Committee decided to give special consideration to cable systems with semi-annual gross subscriber receipts of less than \$160,000 (\$320,000 annually). The royalty fee schedules for cable systems in this category are specified in subclauses (C) and (D).

In lieu of the payments required in subclause (B), systems earning less than \$80,000, semi-annually, are to pay a royalty fee of .5 of 1 percent of gross receipts. Gross receipts under this provision are computed, however, by subtracting from actual gross receipts collected during the payment period the amount by which \$80,000 exceeds such actual gross receipts. Thus, if the actual gross receipts of the cable system for the period covered are \$60,000, the fee is determined by subtracting \$20,000 (the amount by which \$80,000 exceeds actual gross receipts) from \$60,000 and applying .5 of 1 percent to the \$40,000 result. However, gross receipts in no case are to be reduced to less than \$3,000.

Under subclause (D), cable systems with semi-annual gross subscriber receipts of between \$80,000 and \$160,000 are to pay royalty fees of .5 of 1 percent of such actual gross receipts up to \$80,000, and 1 percent of any actual gross receipts in excess of \$80,000. The royalty fee payments under both subclauses (C) and (D) are to be determined without regard to the number of distant signal equivalents, if any, carried by the subject cable systems.

Copyright Royalty Distribution. Section 111(d)(3) provides that the royalty fees paid by cable systems under the compulsory license shall be received by the Register of Copyrights and, after deducting the reasonable costs incurred by the Copyright Office, deposited in the Treasury of the United States. The fees are distributed subsequently, pursuant to the determination of the Copyright Royalty Commission under chapter 8 [§801 et seq. of this title].

The copyright owners entitled to participate in the distribution of the royalty fees paid by cable systems

under the compulsory license are specified in section 111(d)(4). Consistent with the Committee's view that copyright royalty fees should be made only for the retransmission of distant non-network programming, the claimants are limited to (1) copyright owners whose works were included in a secondary transmission made by a cable system of a distant non-network television program; (2) any copyright owner whose work is included in a secondary transmission identified in a special statement of account deposited under section 111(d)(2)(A); and (3) any copyright owner whose work was included in distant non-network programming consisting exclusively of aural signals. Thus, no royalty fees may be claimed or distributed to copyright owners for the retransmission of either “local” or “network” programs.

The Committee recognizes that the bill does not include specific provisions to guide the Copyright Royalty Commission in determining the appropriate division among competing copyright owners of the royalty fees collected from cable systems under Section 111. The Committee concluded that it would not be appropriate to specify particular, limiting standards for distribution. Rather, the Committee believes that the Copyright Royalty Commission should consider all pertinent data and considerations presented by the claimants.

Should disputes arise, however, between the different classes of copyright claimants, the Committee believes that the Copyright Royalty Commission should consider that with respect to the copyright owners of “live” programs identified by the special statement of account deposited under Section 111(d)(2)(A), a special payment is provided in Section 111(f).

Section 111(d)(5) sets forth the procedure for the distribution of the royalty fees paid by cable systems. During the month of July of each year, every person claiming to be entitled to compulsory license fees must file a claim with the Copyright Royalty Commission, in accordance with such provisions as the Commission shall establish. In particular, the Commission may establish the relevant period covered by such claims after giving adequate time for copyright owners to review and consider the statements of account filed by cable systems. Notwithstanding any provisions of the antitrust laws, the claimants may agree among themselves as to the division and distribution of such fees. After the first day of August of each year, the Copyright Royalty Commission shall determine whether a controversy exists concerning the distribution of royalty fees. If no controversy exists, the Commission, after deducting its reasonable administrative costs, shall distribute the fees to the copyright owners entitled or their agents. If the Commission finds the existence of a controversy, it shall, pursuant to the provisions of chapter 8 [§801 et seq. of this title], conduct a proceeding to determine the distribution of royalty fees.

Off-Shore Taping by Cable Systems. Section 111(e) establishes the conditions and limitation upon which certain cable systems located outside the continental United States, and specified in subsection (f), may make tapes of copyrighted programs and retransmit the taped programs to their subscribers upon payment of the compulsory license fee. These conditions and limitations include compliance with detailed transmission, record keeping, and other requirements. Their purpose is to control carefully the use of any tapes made pursuant to the limited recording and retransmission authority established in subsection (f), and to insure that the limited objective of assimilating off-shore cable systems to systems within the United States for purposes of the compulsory license is not exceeded. Any secondary transmission by a cable system entitled to the benefits of the taping authorization that does not comply with the requirements of section 111(e) is an act of infringement and is fully subject to all the remedies provided in the legislation for such actions.

Definitions. Section 111(f) contains a series of definitions. These definitions are found in subsection (f) rather than in section 101 because of their particular application to secondary transmissions by cable systems.

Primary and Secondary Transmissions. The definitions of “primary transmission” and “secondary transmission” have been discussed above. The definition of “secondary transmission” also contains a provision permitting the nonsimultaneous retransmission of a primary transmission if by a cable system “not located in whole or in part within the boundary of the forty-eight contiguous states, Hawaii or Puerto Rico.” Under a proviso, however, a cable system in Hawaii may make a nonsimultaneous retransmission of a primary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations or authorizations of the FCC.

The effect of this definition is to permit certain cable systems in offshore areas, but not including cable systems in the offshore area of Puerto Rico and to a limited extent only in Hawaii, to tape programs and retransmit them to subscribers under the compulsory license. Puerto Rico was excluded based upon a communication the Committee received from the Governor of Puerto Rico stating that the particular television broadcasting problems which the definition seeks to solve for cable systems in other noncontiguous areas do not exist in Puerto Rico. He therefore requested that Puerto Rico be excluded from the scope of the definition. All cable systems covered by the definition are subject to the conditions and limitations for nonsimultaneous transmissions established in section 111(e).

Cable System. The definition of a “cable system” establishes that it is a facility that in whole or in part receives signals of one or more television broadcast stations licensed by the FCC and makes secondary transmissions of such signals to subscribing members of the public who pay for such service. A closed circuit wire system that only originates programs and does not carry television broadcast signals would not come within the definition. Further, the definition provides that, in determining the applicable royalty fee and system classification under subsection (d)(2)(B), (C), or (D) cable systems in contiguous communities under common ownership or control or operating from one head-end are considered as one system.

Local Service Area of a Primary Transmitter. The definition of “local service area of a primary transmitter” establishes the difference between “local” and “distant” signals and therefore the line between signals which are subject to payment under the compulsory license and those that are not. It provides that the local service area of a television broadcast station is the area in which the station is entitled to insist upon its signal being retransmitted by a cable system pursuant to FCC rules and regulations. Under FCC rules and regulations this so-called “must carry” area is defined based on the market size and position of cable systems in 47 C.F.R. §§76.57, 76.59, 76.61 and 76.63. The definition is limited, however, to the FCC rules in effect on April 15, 1976. The purpose of this limitation is to insure that any subsequent rule amendments by the FCC that either increase or decrease the size of the local service area for its purposes do not change the definition for copyright purposes. The Committee believes that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute.

The “local service area of a primary transmitter” of a Canadian or Mexican television station is defined as the area in which such station would be entitled to insist upon its signals being retransmitted if it were a television broadcast station subject to FCC rules and regulations. Since the FCC does not permit a television station licensed in a foreign country to assert a claim to carriage by a U.S. cable system, the local service area of such foreign station is considered to be the same area as if it were a U.S. station.

The local service area for a radio broadcast station is defined to mean “the primary service area of such station pursuant to the rules and regulations of the Fed-

eral Communications Commission.” The term “primary service area” is defined precisely by the FCC with regard to AM stations in Section 73.11(a) of the FCC’s rules. In the case of FM stations, “primary service area” is regarded by the FCC as the area included within the field strength contours specified in Section 73.311 of its rules.

Distant Signal Equivalent. The definition of a “distant signal equivalent” is central to the computation of the royalty fees payable under the compulsory license. It is the value assigned to the secondary transmission of any non-network television programming carried by a cable system, in whole or in part, beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one (1) to each distant independent station and a value of one-quarter ($\frac{1}{4}$) to each distant network station and distant noncommercial educational station carried by a cable system, pursuant to the rules and regulations of the FCC. Thus, a cable system carrying two distant independent stations, two distant network stations and one distant noncommercial educational station would have a total of 2.75 distant signal equivalents.

The values assigned to independent, network and noncommercial educational stations are subject, however, to certain exceptions and limitations. Two of these relate to the mandatory and discretionary program deletion and substitution rules of the FCC. Where the FCC rules require a cable system to omit certain programs (e.g., the syndicated program exclusivity rules) and also permit the substitution of another program in place of the omitted program, no additional value is assigned for the substituted or additional program. Further, where the FCC rules on the date of enactment of this legislation permit a cable system, at its discretion, to make such deletions or substitutions or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no additional value is assigned for the substituted or additional programs. However, the latter discretionary exception is subject to a condition that if the substituted or additional program is a “live” program (e.g., a sports event), then an additional value is assigned to the carriage of the distant signal computed as a fraction of one distant signal equivalent. The fraction is determined by assigning to the numerator the number of days in the year on which the “live” substitution occurs, and by assigning to the denominator the number of days in the year. Further, the discretionary exception is limited to those FCC rules in effect on the date of enactment of this legislation [Oct. 19, 1976]. If subsequent FCC rule amendments or individual authorizations enlarge the discretionary ability of cable systems to delete and substitute programs, such deletions and substitutions would be counted at the full value assigned the particular type of station provided above.

Two further exceptions pertain to the late-night or specialty programming rules of the FCC or to a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry. In this event, the values for independent, network and noncommercial, educational stations set forth above, as the case may be, are determined by multiplying each by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

Network Station. A “network station” is defined as a television broadcast station that is owned or operated by, or affiliated with, one or more of the U.S. television networks providing nationwide transmissions and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station’s typical broadcast day. To qualify as a network station, all the conditions of the definition must be met. Thus, the retransmission of a Canadian station affiliated with a Canadian network would not qualify under the definition. Further, a station affiliated with

a regional network would not qualify, since a regional network would not provide nationwide transmissions. However, a station affiliated with a network providing nationwide transmissions that also occasionally carries regional programs would qualify as a “network station,” if the station transmits a substantial part of the programming supplied by the network for a substantial part of the station’s typical broadcast day.

Independent Station. An “independent station” is defined as a commercial television broadcast station other than a network station. Any commercial station that does not fall within the definition of “network station” is classified as an “independent station.”

Noncommercial Educational Station. A “noncommercial educational station” is defined as a television station that is a noncommercial educational broadcast station within the meaning of section 397 of title 47 [47 U.S.C. 397].

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (d)(4)(A), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The date of enactment of this Act, referred to in the fifth undesignated par. of subsec. (f), defining “distant signal equivalent”, is Oct. 19, 1976.

AMENDMENTS

1995—Subsec. (c)(1). Pub. L. 104-39 inserted “and section 114(d)” after “of this subsection”.

1994—Subsec. (f). Pub. L. 103-369, §3(b), in fourth undesignated par. defining local service area of a primary transmitter, inserted “or such station’s television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations,” after “April 15, 1976.”

Pub. L. 103-369, §3(a), inserted “microwave,” after “wires, cables,” in third undesignated par., defining cable system.

1993—Subsec. (d)(1). Pub. L. 103-198, §6(a)(1), struck out “, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),” after “Register shall” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 103-198, §6(a)(2), struck out “, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),” after “Register of Copyrights may”.

Subsec. (d)(2). Pub. L. 103-198, §6(a)(3), substituted “All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.” for “All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (1) of this subsection.”

Subsec. (d)(4)(A). Pub. L. 103-198, §6(a)(4), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “claim with the” and for “Tribunal” before “requirements that the”.

Subsec. (d)(4)(B). Pub. L. 103-198, §6(a)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners enti-

tled, or to their designated agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.”

Subsec. (d)(4)(C). Pub. L. 103-198, §6(a)(6), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

1990—Subsec. (c)(2)(B). Pub. L. 101-318, §3(a)(1), struck out “recorded the notice specified by subsection (d) and” after “where the cable system has not”.

Subsec. (d)(2). Pub. L. 101-318, §3(a)(2)(A), substituted “clause (1)” for “paragraph (1)”.

Subsec. (d)(3). Pub. L. 101-318, §3(a)(2)(B), substituted “clause (4)” for “clause (5)” in introductory provisions.

Subsec. (d)(3)(B). Pub. L. 101-318, §3(a)(2)(C), substituted “clause (1)(A)” for “clause (2)(A)”.

1988—Subsec. (a)(4), (5). Pub. L. 100-667, §202(1)(A), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1)(A). Pub. L. 100-667, §202(1)(B), inserted provision that determination of total number of subscribers and gross amounts paid to cable system for basic service of providing secondary transmissions of primary broadcast transmitters not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing under section 119.

1986—Subsec. (d). Pub. L. 99-397, §2(a)(1), (4), (5), substituted “paragraph (1)” for “clause (2)” in par. (3), struck out par. (1) which related to recordation of notice with Copyright Office by cable systems in order for secondary transmissions to be subject to compulsory licensing, and redesignated pars. (2) to (5) as (1) to (4), respectively.

Pub. L. 99-397, §2(a)(2), (3), which directed the amendment of subsec. (d) by substituting “paragraph (4)” for “clause (5)” in pars. (2) and (2)(B) could not be executed because pars. (2) and (2)(B) did not contain references to “clause (5)”. See 1990 Amendment note above.

Subsec. (f). Pub. L. 99-397, §2(b), substituted “subsection (d)(1)” for “subsection (d)(2)” in third undesignated par., defining a cable system.

Pub. L. 99-397, §1, inserted provision in fourth undesignated par., defining “local service area of a primary transmitter”, to cover that term in relation to low power television stations.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 3(b) of Pub. L. 103-369 effective July 1, 1994, see section 6(d) of Pub. L. 103-369, set out as an Effective and Termination Dates of 1994 Amendment note under section 119 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(e)(1) of Pub. L. 101-318 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 801 of this title] shall be effective as of August 27, 1986.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted works, see section 106 of this title.

Institution and conclusion of proceedings—

Distribution of royalty fees, see section 803 of this title.

Owner or users of copyrighted work whose royalty rates are specified by this section, see section 803 of this title.

Remedies for alteration of programing by cable systems, see section 510 of this title.

Royalty rate and fees—

Determination concerning adjustment of copyright royalty rate, see section 801 of this title.

Distribution of copyright royalty fees, see section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 110, 114, 119, 501, 510, 511, 801, 802, 803 of this title; title 18 section 2319; title 47 sections 325, 534, 573.

§ 112. Limitations on exclusive rights: Ephemeral recordings

(a)(1) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(A) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(B) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(C) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for

a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under paragraph (1) of this subsection.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if—

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy

or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) STATUTORY LICENSE.—(1) A transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f) is entitled to a statutory license, under the conditions specified by this subsection, to make no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if the following conditions are satisfied:

(A) The phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it.

(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license in accordance with section 114(f) or the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).

(C) Unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord.

(D) Phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the phonorecord under this subsection from a phonorecord lawfully made and acquired under the authority of the copyright owner.

(3)¹ Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(4) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (2) of this subsection during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Librarian of Congress licenses covering such activities with respect to

such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

(5) In the absence of license agreements negotiated under paragraph (3), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (4), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (6), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The copyright arbitration royalty panel shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and

(B) the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms under voluntary license agreements negotiated as provided in paragraphs (3) and (4). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

(6) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

(7) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (4) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be repeated, in accord-

¹ So in original. No par. (2) has been enacted.

ance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1), during a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be concluded in accordance with section 802.

(8)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

(9) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

(10) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of a digital phonorecord delivery, under sections 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6).

(f) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the preexisting works employed in the program.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2558; Pub. L. 105-304, title IV, §§402, 405(b), Oct. 28, 1998, 112 Stat. 2888, 2899.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 112 of the bill concerns itself with a special problem that is not dealt with in the present statutes but is the subject of provisions in a number of foreign statutes and in the revisions of the Berne Convention since 1948. This is the problem of what are commonly called "ephemeral recordings": copies or phonorecords of a work made for purposes of later transmission by a broadcasting organization legally entitled to transmit the work. In other words, where a broadcaster has the privilege of performing or displaying a work either because he is licensed or because the performance or display is exempted under the statute, the question is whether he should be given the additional privilege of recording the performance or display to facilitate its transmission. The need for a limited exemption in these cases because of the practical exigencies of broadcasting has been generally recognized, but the scope of the exemption has been a controversial issue.

Recordings for Licensed Transmissions. Under subsection (a) of section 112, an organization that has acquired the right to transmit any work (other than a motion picture or other audiovisual work), or that is free to transmit a sound recording under section 114, may make a single copy or phonorecord of a particular program embodying the work, if the copy or phonorecord is used solely for the organization's own transmissions within its own area; after 6 months it must be destroyed or preserved solely for archival purposes.

Organizations Covered.—The ephemeral recording privilege is given by subsection (a) to "a transmitting organization entitled to transmit to the public a performance or display of a work." Assuming that the transmission meets the other conditions of the provision, it makes no difference what type of public transmission the organization is making: commercial radio and television broadcasts, public radio and television broadcasts not exempted by section 110(2), pay-TV, closed circuit, background music, and so forth. However, to come within the scope of subsection (a), the organization must have the right to make the transmission "under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a)." Thus, except in the case of copyrighted sound recordings (which have no exclusive performing rights under the bill), the organization must be a transferee or licensee (including compulsory licensee) of performing rights in the work in order to make an ephemeral recording of it.

Some concern has been expressed by authors and publishers lest the term "organization" be construed to include a number of affiliated broadcasters who could exchange the recording without restrictions. The term is intended to cover a broadcasting network, or a local broadcaster or individual transmitter; but, under clauses (1) and (2) of the subsection, the ephemeral recording must be "retained and used solely by the transmitting organization that made it," and must be used solely for that organization's own transmissions within its own area. Thus, an ephemeral recording made by one transmitter, whether it be a network or local broadcaster, could not be made available for use by another transmitter. Likewise, this subsection does not apply to those nonsimultaneous transmissions by cable systems not located within a boundary of the forty-eight contiguous States that are granted a compulsory license under section 111.

Scope of the Privilege.—Subsection (a) permits the transmitting organization to make "no more than one copy or phonorecord of a particular transmission program embodying the performance or display." A "transmission program" is defined in section 101 as a body of material produced for the sole purpose of transmission as a unit. Thus, under section 112(a), a transmitter could make only one copy or phonorecord of a particular "transmission program" containing a copyrighted work, but would not be limited as to the number of times the work itself could be duplicated as part of other "transmission programs."

Three specific limitations on the scope of the ephemeral recording privilege are set out in subsection (a), and unless all are met the making of an “ephemeral recording” becomes fully actionable as an infringement. The first requires that the copy or phonorecord be “retained and used solely by the transmitting organization that made it,” and that “no further copies or phonorecords are reproduced from it.” This means that a transmitting organization would have no privilege of exchanging ephemeral recordings with other transmitters or of allowing them to duplicate their own ephemeral recordings from the copy or phonorecord it has made. There is nothing in the provision to prevent a transmitting organization from having an ephemeral recording made by means of facilities other than its own, although it would not be permissible for a person or organization other than a transmitting organization to make a recording on its own initiative for possible sale or lease to a broadcaster. The ephemeral recording privilege would extend to copies or phonorecords made in advance for later broadcast, as well as recordings of a program that are made while it is being transmitted and are intended for deferred transmission or preservation.

Clause (2) of section 112(a) provides that, to be exempt from copyright, the copy or phonorecord must be “used solely for the transmitting organization’s own transmissions within its local service area, or for purposes of archival preservation or security”. The term “local service area” is defined in section 111(f).

Clause (3) of section 112(a) provides that, unless preserved exclusively for archival purposes, the copy or phonorecord of a transmission program must be destroyed within six months from the date the transmission program was first transmitted to the public.

Recordings for Instructional Transmissions. Section 112(b) represents a response to the arguments of instructional broadcasters and other educational groups for special recording privileges, although it does not go as far as these groups requested. In general, it permits a nonprofit organization that is free to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make not more than thirty copies or phonorecords and to use the ephemeral recordings for transmitting purposes for not more than seven years after the initial transmission.

Organizations Covered.—The privilege of making ephemeral recordings under section 112(b) extends to a “governmental body or other nonprofit organization entitled to transmit a performance or display of a work under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a).” Aside from phonorecords of copyrighted sound recordings, the ephemeral recordings made by an instructional broadcaster under subsection (b) must embody a performance or display that meets all of the qualifications for exemption under section 110(2). Copies or phonorecords made for educational broadcasts of a general cultural nature, or for transmission as part of an information storage and retrieval system, would not be exempted from copyright protection under section 112(b).

Motion Pictures and Other Audiovisual Works.—Since the performance exemption provided by section 110(2) applies only to nondramatic literary and musical works, there was no need to exclude motion pictures and other audiovisual works explicitly from the scope of section 112(b). Another point stressed by the producers of educational films in this connection, however, was that ephemeral recordings made by instructional broadcasters are in fact audiovisual works that often compete for exactly the same market. They argued that it is unfair to allow instructional broadcasters to reproduce multiple copies of films and tapes, and to exchange them with other broadcasters, without paying any copyright royalties, thereby directly injuring the market of producers of audiovisual works who now pay substantial fees to authors for the same uses. These arguments are persuasive and justify the placing of reasonable limits on the recording privilege.

Scope of the Privilege.—Under subsection (b) an instructional broadcaster may make “no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display.” No further copies or phonorecords can be reproduced from those made under section 112(b), either by the nonprofit organization that made them or by anyone else.

On the other hand, if the nonprofit organization does nothing directly or indirectly to authorize, induce, or encourage others to duplicate additional copies or phonorecords of an ephemeral recording in excess of the limit of thirty, it would not be held responsible as participating in the infringement in such a case, and the unauthorized copies would not be counted against the organization’s total of thirty.

Unlike ephemeral recordings made under subsection (a), exchanges of recordings among instructional broadcasters are permitted. An organization that has made copies or phonorecords under subsection (b) may use one of them for purposes of its own transmissions that are exempted by section 110(2), and it may also transfer the other 29 copies to other instructional broadcasters for use in the same way.

As in the case of ephemeral recordings made under section 112(a), a copy or phonorecord made for instructional broadcasting could be reused in any number of transmissions within the time limits specified in the provision. Because of the special problems of instructional broadcasters resulting from the scheduling of courses and the need to prerecord well in advance of transmission, the period of use has been extended to seven years from the date the transmission program was first transmitted to the public.

Religious Broadcasts.—Section 112(c) provides that it is not an infringement of copyright for certain nonprofit organizations to make no more than one copy for each transmitting organization of a broadcast program embodying a performance of a nondramatic musical work of a religious nature or of a sound recording of such a musical work. In order for this exception to be applicable there must be no charge for the distribution of the copies, none of the copies may be used for any performance other than a single transmission by an organization possessing a license to transmit a copyrighted work, and, other than for one copy that may be preserved for archival purposes, the remaining copies must be destroyed within one year from the date the program was first transmitted to the public.

Despite objections by music copyright owners, the Committee found this exemption to be justified by the special circumstances under which many religious programs are broadcast. These programs are produced on tape or disk for distribution by mail of one copy only to each broadcast station carrying the program. None of the programs are prepared for profit, and the program producer either pays the station to carry the program or furnishes it free of charge. The stations have performing licenses, so the copyright owners receive compensation. Following the performance, the tape is returned or the disk destroyed. It seems likely that, as has been alleged, to require a second payment for the mechanical reproduction under these circumstances would simply have the effect of driving some of the copyrighted music off the air.

Ephemeral Recordings for Transmissions to Handicapped Audiences. As a counterpart to its amendment of section 110(8), the Committee adopted a new provision, subsection (d) of section 112, to provide an ephemeral recording exemption in the case of transmissions to the blind and deaf. New subsection would permit the making of one recording of a performance exempted under section 110(8), and its retention for an unlimited period. It would not permit the making of further reproductions or their exchange with other organizations.

Copyright Status of Ephemeral Recordings. A program reproduced in an ephemeral recording made under section 112 in many cases will constitute a motion picture, a sound recording, or some other kind of derivative work, and will thus be potentially copyrightable

under section 103. In section 112(e) it is provided that ephemeral recordings are not to be copyrightable as derivative works except with the consent of the owners of the copyrighted material employed in them.

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (e)(3), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The date of the enactment of the Digital Millennium Copyright Act, referred to in subsec. (e)(4), (5), is the date of enactment of Pub. L. 105-304, which was approved Oct. 28, 1998.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-304, § 402, designated existing provisions as par. (1), in introductory provisions inserted “, including a statutory license under section 114(f),” after “under a license” and “or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis,” after “114(a),”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsecs. (e), (f). Pub. L. 105-304, § 405(b), added subsec. (e) and redesignated former subsec. (e) as (f).

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105-304, title IV, § 405(c), Oct. 28, 1998, 112 Stat. 2902, provided that: “Nothing in this section [amending this section and sections 114 and 801 to 803 of this title and enacting provisions set out as notes under section 114 of this title] or the amendments made by this section shall affect the scope of section 112(a) of title 17, United States Code, or the entitlement of any person to an exemption thereunder.”

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 802, 803 of this title; title 18 section 2319.

§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

(d)(1) In a case in which—

(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2560; Pub. L. 101-650, title VI, § 604, Dec. 1, 1990, 104 Stat. 5130.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 113 deals with the extent of copyright protection in “works of applied art.” The section takes as its starting point the Supreme Court's decision in *Mazer v. Stein*, 347 U.S. 201 (1954) [74 S.Ct. 460, 98 L.Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 949, 98 L.Ed. 1096], and the first sentence of subsection (a) restates the basic principle established by that decision. The rule of *Mazer*, as affirmed by the bill, is that copyright in a pictorial, graphic, or sculptural work will not be af-

fectured if the work is employed as the design of a useful article, and will afford protection to the copyright owner against the unauthorized reproduction of his work in useful as well as nonuseful articles. The terms “pictorial, graphic, and sculptural works” and “useful article” are defined in section 101, and these definitions are discussed above in connection with section 102.

The broad language of section 106(1) and of subsection (a) of section 113 raises questions as to the extent of copyright protection for a pictorial, graphic, or sculptural work that portrays, depicts, or represents an image of a useful article in such a way that the utilitarian nature of the article can be seen. To take the example usually cited, would copyright in a drawing or model of an automobile give the artist the exclusive right to make automobiles of the same design?

The 1961 Report of the Register of Copyrights stated, on the basis of judicial precedent, that “copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the manufacture of the useful article itself,” and recommended specifically that “the distinctions drawn in this area by existing court decisions” not be altered by the statute. The Register’s Supplementary Report, at page 48, cited a number of these decisions, and explained the insuperable difficulty of finding “any statutory formulation that would express the distinction satisfactorily.” Section 113(b) reflects the Register’s conclusion that “the real need is to make clear that there is no intention to change the present law with respect to the scope of protection in a work portraying a useful article as such.”

Section 113(c) provides that it would not be an infringement of copyright, where a copyright work has been lawfully published as the design of useful articles, to make, distribute or display pictures of the articles in advertising, in feature stories about the articles, or in the news reports.

In conformity with its deletion from the bill of Title II, relating to the protection of ornamental designs of useful articles, the Committee has deleted subsections (b), (c), and (d) of section 113 of S. 22 as adopted by the Senate, since they are no longer relevant.

REFERENCES IN TEXT

Section 610(a) of the Visual Artists Rights Act of 1990 [Pub. L. 101-650], referred to in subsec. (d)(1)(B), is set out as an Effective Date note under section 106A of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101-650 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

CROSS REFERENCES

Exclusive rights in copyrighted work, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 106A, 301, 501, 511 of this title; title 18 section 2319.

§ 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords

or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) LIMITATIONS ON EXCLUSIVE RIGHT.—Notwithstanding the provisions of section 106(6)—

(1) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(A) a nonsubscription broadcast transmission;

(B) a retransmission of a nonsubscription broadcast transmission: *Provided*, That, in the case of a retransmission of a radio station’s broadcast transmission—

(i) the radio station’s broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

(I) the 150 mile limitation under this clause shall not apply when a nonsubscription broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

(II) in the case of a subscription retransmission of a nonsubscription broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

(ii) the retransmission is of radio station broadcast transmissions that are—

(I) obtained by the retransmitter over the air;

(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

(III) retransmitted only within the local communities served by the re-transmitter;

(iii) the radio station's broadcast transmission was being retransmitted to cable systems (as defined in section 111(f) by a satellite carrier on January 1, 1995, and that retransmission was being retransmitted by cable systems as a separate and discrete signal, and the satellite carrier obtains the radio station's broadcast transmission in an analog format: *Provided*, That the broadcast transmission being retransmitted may embody the programming of no more than one radio station; or

(iv) the radio station's broadcast transmission is made by a noncommercial educational broadcast station funded on or after January 1, 1995, under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)), consists solely of non-commercial educational and cultural radio programs, and the retransmission, whether or not simultaneous, is a nonsubscription terrestrial broadcast retransmission; or

(C) a transmission that comes within any of the following categories—

(i) a prior or simultaneous transmission incidental to an exempt transmission, such as a feed received by and then retransmitted by an exempt transmitter: *Provided*, That such incidental transmissions do not include any subscription transmission directly for reception by members of the public;

(ii) a transmission within a business establishment, confined to its premises or the immediately surrounding vicinity;

(iii) a retransmission by any retransmitter, including a multichannel video programming distributor as defined in section 602(12)¹ of the Communications Act of 1934 (47 U.S.C. 522(12)), of a transmission by a transmitter licensed to publicly perform the sound recording as a part of that transmission, if the retransmission is simultaneous with the licensed transmission and authorized by the transmitter; or

(iv) a transmission to a business establishment for use in the ordinary course of its business: *Provided*, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the sound recording performance complement. Nothing in this clause shall limit the scope of the exemption in clause (ii).

(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording publicly by means of a subscription digital audio transmission not exempt under paragraph (1), an eligible nonsubscription transmission, or a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service shall be subject to statutory licensing, in accordance with subsection (f) if—

(A)(i) the transmission is not part of an interactive service;

(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service—

(i) the transmission does not exceed the sound recording performance complement; and

(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) that is made by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless—

(I) the broadcast station makes broadcast transmissions—

(aa) in digital format that regularly exceed the sound recording performance complement; or

(bb) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement; and

(II) the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording performance complement as provided in this clause;

(ii) the transmitting entity does not cause to be published, or induce or facili-

¹ See References in Text note below.

tate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or to an advance program schedule published, induced, or facilitated by the broadcast station, if the transmitting entity does not have actual knowledge and has not received written notice from the copyright owner or its representative that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule is a schedule of classical music programming published by the broadcast station in the same manner as published by that broadcast station on or before September 30, 1998;

(iii) the transmission—

(I) is not part of an archived program of less than 5 hours duration;

(II) is not part of an archived program of 5 hours or greater in duration that is made available for a period exceeding 2 weeks;

(III) is not part of a continuous program which is of less than 3 hours duration; or

(IV) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

(aa) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a program of less than 1 hour in duration, or

(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration,

except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(iv) the transmitting entity does not knowingly perform the sound recording, as

part of a service that offers transmissions of visual images contemporaneously with transmissions of sound recordings, in a manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed by the Federal Communications Commission, on or before July 31, 1998;

(vi) the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient, and if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords of the transmission directly in a digital format, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology;

(vii) phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under the authority of the copyright owner, except that the requirement of this clause shall not apply to a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or re-

sulting in perceptible aural or visual degradation of the digital signal, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act and shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the service provided by the transmitting entity that have the capability to display such textual data are not common in the marketplace.

(3) LICENSES FOR TRANSMISSIONS BY INTERACTIVE SERVICES.—

(A) No interactive service shall be granted an exclusive license under section 106(6) for the performance of a sound recording publicly by means of digital audio transmission for a period in excess of 12 months, except that with respect to an exclusive license granted to an interactive service by a licensor that holds the copyright to 1,000 or fewer sound recordings, the period of such license shall not exceed 24 months: *Provided, however,* That the grantee of such exclusive license shall be ineligible to receive another exclusive license for the performance of that sound recording for a period of 13 months from the expiration of the prior exclusive license.

(B) The limitation set forth in subparagraph (A) of this paragraph shall not apply if—

(i) the licensor has granted and there remain in effect licenses under section 106(6) for the public performance of sound recordings by means of digital audio transmission by at least 5 different interactive services: *Provided, however,* That each such license must be for a minimum of 10 percent of the copyrighted sound recordings owned by the licensor that have been licensed to interactive services, but in no event less than 50 sound recordings; or

(ii) the exclusive license is granted to perform publicly up to 45 seconds of a sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

(C) Notwithstanding the grant of an exclusive or nonexclusive license of the right of public performance under section 106(6), an interactive service may not publicly perform a sound recording unless a license has been granted for the public performance of any copyrighted musical work contained in the sound recording: *Provided,* That such license to publicly perform the copyrighted musical work may be granted either by a performing rights society representing the copyright owner or by the copyright owner.

(D) The performance of a sound recording by means of a retransmission of a digital audio transmission is not an infringement of section 106(6) if—

(i) the retransmission is of a transmission by an interactive service licensed to publicly perform the sound recording to a particular member of the public as part of that transmission; and

(ii) the retransmission is simultaneous with the licensed transmission, authorized by the transmitter, and limited to that particular member of the public intended by the interactive service to be the recipient of the transmission.

(E) For the purposes of this paragraph—

(i) a “licensor” shall include the licensing entity and any other entity under any material degree of common ownership, management, or control that owns copyrights in sound recordings; and

(ii) a “performing rights society” is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owner, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

(4) RIGHTS NOT OTHERWISE LIMITED.—

(A) Except as expressly provided in this section, this section does not limit or impair the exclusive right to perform a sound recording publicly by means of a digital audio transmission under section 106(6).

(B) Nothing in this section annuls or limits in any way—

(i) the exclusive right to publicly perform a musical work, including by means of a digital audio transmission, under section 106(4);

(ii) the exclusive rights in a sound recording or the musical work embodied therein under sections 106(1), 106(2) and 106(3); or

(iii) any other rights under any other clause of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(C) Any limitations in this section on the exclusive right under section 106(6) apply

only to the exclusive right under section 106(6) and not to any other exclusive rights under section 106. Nothing in this section shall be construed to annul, limit, impair or otherwise affect in any way the ability of the owner of a copyright in a sound recording to exercise the rights under sections 106(1), 106(2) and 106(3), or to obtain the remedies available under this title pursuant to such rights, as such rights and remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(e) AUTHORITY FOR NEGOTIATIONS.—

(1) Notwithstanding any provision of the antitrust laws, in negotiating statutory licenses in accordance with subsection (f), any copyright owners of sound recordings and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.

(2) For licenses granted under section 106(6), other than statutory licenses, such as for performances by interactive services or performances that exceed the sound recording performance complement—

(A) copyright owners of sound recordings affected by this section may designate common agents to act on their behalf to grant licenses and receive and remit royalty payments: *Provided*, That each copyright owner shall establish the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other copyright owners of sound recordings; and

(B) entities performing sound recordings affected by this section may designate common agents to act on their behalf to obtain licenses and collect and pay royalty fees: *Provided*, That each entity performing sound recordings shall determine the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other entities performing sound recordings.

(f) LICENSES FOR CERTAIN NONEXEMPT TRANSMISSIONS.—

(1)(A) No later than 30 days after the enactment of the Digital Performance Right in Sound Recordings Act of 1995, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) of this section during the period beginning on the effective date of such Act and ending on December 31, 2001, or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian is-

sues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel's determination). Such terms and rates shall distinguish among the different types of digital audio transmission services then in operation. Any copyright owners of sound recordings, preexisting subscription services, or preexisting satellite digital audio radio services may submit to the Librarian of Congress licenses covering such subscription transmissions with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph. In establishing rates and terms for preexisting subscription services and preexisting satellite digital audio radio services, in addition to the objectives set forth in section 801(b)(1), the copyright arbitration royalty panel may consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in subparagraph (A).

(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe—

(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational; and

(II) in the first week of January 2001, and at 5-year intervals thereafter.

(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I) of this subparagraph; or

(II) on July 1, 2001, and at 5-year intervals thereafter.

(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

(2)(A) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services and new subscription services then in operation and shall include a minimum fee for each such type of service. Any copyright owners of sound recordings or any entities performing sound recordings affected by this paragraph may submit to the Librarian of Congress licenses covering such eligible nonsubscription transmissions and new subscription services with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. In establishing rates and terms for transmissions by eligible nonsubscription services and new subscription services, the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive and programming information presented by the parties, including—

(i) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording

copyright owner's other streams of revenue from its sound recordings; and

(ii) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated under subparagraph (A).

(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated in accordance with regulations that the Librarian of Congress shall prescribe—

(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational; and

(II) in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I); or

(II) on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

(4)(A) The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing

the exclusive right of the copyright owner of the sound recording—

(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.

(g) PROCEEDS FROM LICENSING OF TRANSMISSIONS.—

(1) Except in the case of a transmission licensed under a statutory license in accordance with subsection (f) of this section—

(A) a featured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the artist's contract; and

(B) a nonfeatured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the nonfeatured recording artist's applicable contract or other applicable agreement.

(2) The copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission shall allocate to recording artists in the following manner its receipts from the statutory licensing of transmission performances of the sound recording in accordance with subsection (f) of this section:

(A) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

(B) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

(C) 45 percent of the receipts shall be allocated, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings).

(h) LICENSING TO AFFILIATES.—

(1) If the copyright owner of a sound recording licenses an affiliated entity the right to publicly perform a sound recording by means of a digital audio transmission under section 106(6), the copyright owner shall make the licensed sound recording available under section 106(6) on no less favorable terms and conditions to all bona fide entities that offer similar services, except that, if there are material differences in the scope of the requested license with respect to the type of service, the particular sound recordings licensed, the frequency of use, the number of subscribers served, or the duration, then the copyright owner may establish different terms and conditions for such other services.

(2) The limitation set forth in paragraph (1) of this subsection shall not apply in the case where the copyright owner of a sound recording licenses—

(A) an interactive service; or

(B) an entity to perform publicly up to 45 seconds of the sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

(i) NO EFFECT ON ROYALTIES FOR UNDERLYING WORKS.—License fees payable for the public performance of sound recordings under section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works. It is the intent of Congress that royalties payable to copyright owners of musical works for the public performance of their works shall not be diminished in any respect as a result of the rights granted by section 106(6).

(j) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) An "affiliated entity" is an entity engaging in digital audio transmissions covered by section 106(6), other than an interactive service, in which the licensor has any direct or indirect partnership or any ownership interest amounting to 5 percent or more of the outstanding voting or non-voting stock.

(2) An "archived program" is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include a recorded event or broadcast transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording.

(3) A "broadcast" transmission is a transmission made by a terrestrial broadcast station licensed as such by the Federal Communications Commission.

(4) A "continuous program" is a predetermined program that is continuously performed in the same order and that is accessed at a point in the program that is beyond the control of the transmission recipient.

(5) A "digital audio transmission" is a digital transmission as defined in section 101, that embodies the transmission of a sound record-

ing. This term does not include the transmission of any audiovisual work.

(6) An “eligible nonsubscription transmission” is a noninteractive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(7) An “interactive service” is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

(8) A “new subscription service” is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(9) A “nonsubscription” transmission is any transmission that is not a subscription transmission.

(10) A “preexisting satellite digital audio radio service” is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(11) A “preexisting subscription service” is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(12) A “retransmission” is a further transmission of an initial transmission, and includes any further retransmission of the same transmission. Except as provided in this section, a transmission qualifies as a “retransmission” only if it is simultaneous with the initial transmission. Nothing in this definition shall be construed to exempt a transmission that fails to satisfy a separate element required to qualify for an exemption under section 114(d)(1).

(13) The “sound recording performance complement” is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—

(i) by the same featured recording artist; or

(ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States,

if no more than three such selections are transmitted consecutively:

Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

(14) A “subscription” transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

(15) A “transmission” is either an initial transmission or a retransmission.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2560; Pub. L. 104-39, § 3, Nov. 1, 1995, 109 Stat. 336; Pub. L. 105-80, § 3, Nov. 13, 1997, 111 Stat. 1531; Pub. L. 105-304, title IV, § 405(a)(1)–(4), Oct. 28, 1998, 112 Stat. 2890–2897.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Subsection (a) of Section 114 specified that the exclusive rights of the owner of copyright in a sound recording are limited to the rights to reproduce the sound recording in copies or phonorecords, to prepare derivative works based on the copyrighted sound recording, and to distribute copies or phonorecords of the sound recording to the public. Subsection (a) states explicitly that the owner's rights “do not include any right of performance under section 106(4).” The Committee considered at length the arguments in favor of establishing a limited performance right, in the form of a compulsory license, for copyrighted sound recordings, but concluded that the problem requires further study. It therefore added a new subsection (d) to the bill requiring the Register of Copyrights to submit to Congress, on January 3, 1978, “a report setting forth recommenda-

tions as to whether this section should be amended to provide for performers and copyright owners * * * any performance rights” in copyrighted sound recordings. Under the new subsection, the report “should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.”

Subsection (b) of section 114 makes clear that statutory protection for sound recordings extends only to the particular sounds of which the recording consists, and would not prevent a separate recording of another performance in which those sounds are imitated. Thus, infringement takes place whenever all or any substantial portion of the actual sounds that go to make up a copyrighted sound recording are reproduced in phonorecords by repressing, transcribing, recapturing off the air, or any other method, or by reproducing them in the soundtrack or audio portion of a motion picture or other audiovisual work. Mere imitation of a recorded performance would not constitute a copyright infringement even where one performer deliberately sets out to simulate another’s performance as exactly as possible.

Under section 114, the exclusive right of owner of copyright in a sound recording to prepare derivative works based on the copyrighted sound recording is recognized. However, in view of the expressed intention not to give exclusive rights against imitative or simulated performances and recordings, the Committee adopted an amendment to make clear the scope of rights under section 106(2) in this context. Section 114(b) provides that the “exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality.”

Another amendment deals with the use of copyrighted sound recordings “included in educational television and radio programs * * * distributed or transmitted by or through public broadcasting entities.” This use of recordings is permissible without authorization from the owner of copyright in the sound recording, as long as “copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.”

During the 1975 hearings, the Register of Copyrights expressed some concern that an invaluable segment of this country’s musical heritage—in the form of sound recordings—had become inaccessible to musicologists and to others for scholarly purposes. Several of the major recording companies have responded to the Register’s concern by granting blanket licenses to the Library of Congress to permit it to make single copy duplications of sound recordings maintained in the Library’s archives for research purposes. Moreover, steps are being taken to determine the feasibility of additional licensing arrangements as a means of satisfying the needs of key regional music libraries across the country. The Register has agreed to report to Congress if further legislative consideration should be undertaken.

Section 114(c) states explicitly that nothing in the provisions of section 114 should be construed to “limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).” This principle is already implicit in the bill, but it is restated to avoid the danger of confusion between rights in a sound recording and rights in the musical composition or other work embodied in the recording.

REFERENCES IN TEXT

Section 602(12) of the Communications Act of 1934, referred to in subsec. (d)(1)(C)(iii), was subsequently amended, and section 602(12) no longer defines “multi-channel video programming distributor”. However, such term is defined elsewhere in that section.

The date of the enactment of the Digital Millennium Copyright Act, referred to in subsecs. (d)(2)(C)(ix) and (f)(2)(A), (B), is the date of enactment of Pub. L. 105–304, which was approved Oct. 28, 1998.

The date of enactment of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsecs. (d)(4)(B)(iii), (C) and (f)(1), is the date of enactment of Pub. L. 104–39, which was approved Nov. 1, 1995.

The antitrust laws, referred to in subsec. (e)(1), are classified generally to chapter 1 (§ 1 et seq.) of Title 15, Commerce and Trade.

For effective date of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsec. (f)(1), see section 6 of Pub. L. 104–39, set out as an Effective Date of 1995 Amendment note under section 101 of this title.

AMENDMENTS

1998—Subsec. (d)(1)(A). Pub. L. 105–304, § 405(a)(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows:

“(A)(i) a nonsubscription transmission other than a retransmission;

“(ii) an initial nonsubscription retransmission made for direct reception by members of the public of a prior or simultaneous incidental transmission that is not made for direct reception by members of the public; or

“(iii) a nonsubscription broadcast transmission.”

Subsec. (d)(2). Pub. L. 105–304, § 405(a)(1)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “In the case of a subscription transmission not exempt under subsection (d)(1), the performance of a sound recording publicly by means of a digital audio transmission shall be subject to statutory licensing, in accordance with subsection (f) of this section, if—

“(A) the transmission is not part of an interactive service;

“(B) the transmission does not exceed the sound recording performance complement;

“(C) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted;

“(D) except in the case of transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

“(E) except as provided in section 1002(e) of this title, the transmission of the sound recording is accompanied by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.”

Subsec. (f). Pub. L. 105–304, § 405(a)(2)(A), substituted “Certain Nonexempt” for “Nonexempt Subscription” in heading.

Subsec. (f)(1)(A). Pub. L. 105–304, § 405(a)(2)(B), designated existing provisions as subpar. (A), in first sentence, substituted “subscription transmissions by pre-existing subscription services and transmissions by pre-existing satellite digital audio radio services” for “the activities” and “2001” for “2000”, and amended third sentence generally. Prior to amendment, third sentence read as follows: “Any copyright owners of sound recordings or any entities performing sound recordings affected by this section may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings.”

Subsec. (f)(1)(B), (C). Pub. L. 105–304, § 405(a)(2)(C), added subpars. (B) and (C).

Subsec. (f)(2) to (5). Pub. L. 105–304, § 405(a)(2)(C), added pars. (2) to (4) and struck out former pars. (2) to (5), which provided: in par. (2) that Librarian of Congress would convene a copyright arbitration royalty panel to determine schedule of rates and terms, that panel could consider rates and terms for comparable types of services under voluntary license agreements, and that requirements would be established by which

copyright owners would receive notice of use of their recordings; in par. (3) that voluntarily negotiated license agreements would be given effect in lieu of determination by panel or decision by Librarian; in par. (4) that publication of notice of negotiations would be repeated no later than 30 days after petition was filed, in the first week of January, 2000, and at 5-year intervals thereafter, and that par. (2) procedures would be repeated upon filing of petition during a 60-day period commencing six months after publication of notice or on July 1, 2000 and at 5-year intervals thereafter; and in par. (5) that performance by non-exempt subscription transmission without infringing copyright was permissible by compliance with notice requirements and payment of royalty fees or agreement to pay such fees.

Subsec. (g). Pub. L. 105-304, § 405(a)(3)(A), struck out “Subscription” before “Transmissions” in heading.

Subsec. (g)(1). Pub. L. 105-304, § 405(a)(3)(B), substituted “transmission licensed under a statutory license” for “subscription transmission licensed” in introductory provisions.

Subsec. (g)(1)(A), (B). Pub. L. 105-304, § 405(a)(3)(C), struck out “subscription” before “transmission”.

Subsec. (g)(2). Pub. L. 105-304, § 405(a)(3)(D), struck out “subscription” before “transmission performances” in introductory provisions.

Subsec. (j)(2), (3). Pub. L. 105-304, § 405(a)(4)(A), (B), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (5).

Subsec. (j)(4). Pub. L. 105-304, § 405(a)(4)(A), (C), added par. (4) and struck out former par. (4) which read as follows: “An ‘interactive service’ is one that enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service interactive. If an entity offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an interactive service.”

Subsec. (j)(5). Pub. L. 105-304, § 405(a)(4)(A), redesignated par. (3) as (5). Former par. (5) redesignated (9).

Subsec. (j)(6) to (8). Pub. L. 105-304, § 405(a)(4)(A), (D), added pars. (6) to (8). Former pars. (6) to (8) redesignated (12) to (14), respectively.

Subsec. (j)(9). Pub. L. 105-304, § 405(a)(4)(A), redesignated par. (5) as (9) and struck out former par. (9) which read as follows: “A ‘transmission’ includes both an initial transmission and a retransmission.”

Subsec. (j)(10), (11). Pub. L. 105-304, § 405(a)(4)(E), added pars. (10) and (11).

Subsec. (j)(12) to (14). Pub. L. 105-304, § 405(a)(4)(A), redesignated pars. (6) to (8) as (12) to (14), respectively.

Subsec. (j)(15). Pub. L. 105-304, § 405(a)(4)(F), added par. (15).

1997—Subsec. (f)(1). Pub. L. 105-80, § 3(1), inserted “, or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel’s determination)” after “December 31, 2000”.

Subsec. (f)(2). Pub. L. 105-80, § 3(2), struck out “and publish in the Federal Register” before “a schedule of rates and terms”.

1995—Subsec. (a). Pub. L. 104-39, § 3(1), substituted “(3) and (6) of section 106” for “and (3) of section 106”.

Subsec. (b). Pub. L. 104-39, § 3(2), substituted “phonorecords or copies” for “phonorecords, or of copies of motion pictures and other audiovisual works,” in first sentence.

Subsec. (d). Pub. L. 104-39, § 3(3), added subsec. (d) and struck out former subsec. (d), which read as follows: “On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcasting, recording, motion picture, entertainment industries, and arts organizations, representatives of organized

labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.”

Subsecs. (e) to (j). Pub. L. 104-39, § 3(4), added subsecs. (e) to (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 405(a)(1), (2)(A), (B)(i)(I), (II), (ii), (3), (4) of Pub. L. 105-304 effective Oct. 28, 1998, except as otherwise provided, see section 407 of Pub. L. 105-304, set out as a note under section 108 of this title.

Pub. L. 105-304, title IV, § 405(a)(5), Oct. 28, 1998, 112 Stat. 2899, provided that: “The amendment made by paragraph (2)(B)(i)(III) of this subsection [amending this section] shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995 [Pub. L. 104-39], and the publication of notice of proceedings under section 114(f)(1) of title 17, United States Code, as in effect upon the effective date of that Act [see Effective Date of 1995 Amendment note set out under section 101 of this title], for the determination of royalty payments shall be deemed to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001.”

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, except that provisions of subsecs. (e) and (f) of this section effective Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105-304, title IV, § 405(a)(6), Oct. 28, 1998, 112 Stat. 2899, provided that: “The amendments made by this subsection [amending this section] do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d)(4), and (i) of such section.”

CROSS REFERENCES

Ephemeral recordings, see section 112 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 111, 112, 115, 119, 501, 511, 801, 802, 803 of this title; title 18 section 2319.

§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) AVAILABILITY AND SCOPE OF COMPULSORY LICENSE.—

(1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person, including those who make phonorecords or digital phonorecord deliveries, may, by complying with the provisions of this section, obtain a compulsory license to make and distribute

phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless: (i) such sound recording was fixed lawfully; and (ii) the making of the phonorecords was authorized by the owner of copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) NOTICE OF INTENTION TO OBTAIN COMPULSORY LICENSE.—

(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Failure to serve or file the notice required by clause (1) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—

(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, and other than as provided in paragraph (3), a phonorecord is considered “distributed” if the person exercising the compulsory

license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3)(A) A compulsory license under this section includes the right of the compulsory licensee to distribute or authorize the distribution of a phonorecord of a nondramatic musical work by means of a digital transmission which constitutes a digital phonorecord delivery, regardless of whether the digital transmission is also a public performance of the sound recording under section 106(6) of this title or of any nondramatic musical work embodied therein under section 106(4) of this title. For every digital phonorecord delivery by or under the authority of the compulsory licensee—

(i) on or before December 31, 1997, the royalty payable by the compulsory licensee shall be the royalty prescribed under paragraph (2) and chapter 8 of this title; and

(ii) on or after January 1, 1998, the royalty payable by the compulsory licensee shall be the royalty prescribed under subparagraphs (B) through (F) and chapter 8 of this title.

(B) Notwithstanding any provision of the antitrust laws, any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a)(1) may negotiate and agree upon the terms and rates of royalty payments under this paragraph and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay or receive such royalty payments. Such authority to negotiate the terms and rates of royalty payments includes, but is not limited to, the authority to negotiate the year during which the royalty rates prescribed under subparagraphs (B) through (F) and chapter 8 of this title shall next be determined.

(C) During the period of June 30, 1996, through December 31, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subparagraph (A) during the period beginning January 1, 1998, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C), (D) or (F), or such other date (regarding digital phonorecord deliveries) as the parties may agree. Such terms and rates shall distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general. Any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a)(1) may submit to the Librarian of Congress licenses covering such activities. The parties to each negotiation proceeding shall bear their own costs.

(D) In the absence of license agreements negotiated under subparagraphs (B) and (C), upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period beginning January 1, 1998, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C), (D) or (F), or such other date (regarding digital phonorecord deliveries) as may be determined pursuant to subparagraphs (B) and (C). Such terms and rates shall distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general. In addition to the objectives set forth in section 801(b)(1), in establishing such rates and terms, the copyright arbitration royalty panel may consider rates and terms under voluntary license agreements negotiated as provided in subparagraphs (B) and (C). The royalty rates payable for a compulsory license for a digital phonorecord delivery under this section shall be established de novo and no precedential effect shall be given to the amount of the royalty payable by a compulsory licensee for digital phonorecord deliveries on or before December 31, 1997. The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries.

(E)(i) License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license under subsection (a)(1) shall be given effect in lieu of any determination by the Librarian of Congress. Subject to clause (ii), the royalty rates determined pursuant to subparagraph (C), (D) or (F) shall be given effect in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person's exclusive rights in the musical work under paragraphs (1) and (3) of section 106 or commits another person to grant a license in that musical work under paragraphs (1) and (3) of section 106, to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.

(ii) The second sentence of clause (i) shall not apply to—

(I) a contract entered into on or before June 22, 1995, and not modified thereafter for the purpose of reducing the royalty rates determined pursuant to subparagraph (C), (D) or (F) or of increasing the number of musical works within the scope of the contract covered by the reduced rates, except if a con-

tract entered into on or before June 22, 1995, is modified thereafter for the purpose of increasing the number of musical works within the scope of the contract, any contrary royalty rates specified in the contract shall be given effect in lieu of royalty rates determined pursuant to subparagraph (C), (D) or (F) for the number of musical works within the scope of the contract as of June 22, 1995; and

(II) a contract entered into after the date that the sound recording is fixed in a tangible medium of expression substantially in a form intended for commercial release, if at the time the contract is entered into, the recording artist retains the right to grant licenses as to the musical work under paragraphs (1) and (3) of section 106.

(F) The procedures specified in subparagraphs (C) and (D) shall be repeated and concluded, in accordance with regulations that the Librarian of Congress shall prescribe, in each fifth calendar year after 1997, except to the extent that different years for the repeating and concluding of such proceedings may be determined in accordance with subparagraphs (B) and (C).

(G) Except as provided in section 1002(e) of this title, a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

(H)(i) A digital phonorecord delivery of a sound recording is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, unless—

(I) the digital phonorecord delivery has been authorized by the copyright owner of the sound recording; and

(II) the owner of the copyright in the sound recording or the entity making the digital phonorecord delivery has obtained a compulsory license under this section or has otherwise been authorized by the copyright owner of the musical work to distribute or authorize the distribution, by means of a digital phonorecord delivery, of each musical work embodied in the sound recording.

(ii) Any cause of action under this subparagraph shall be in addition to those available to the owner of the copyright in the nondramatic musical work under subsection (c)(6) and section 106(4) and the owner of the copyright in the sound recording under section 106(6).

(I) The liability of the copyright owner of a sound recording for infringement of the copyright in a nondramatic musical work embodied in the sound recording shall be determined in accordance with applicable law, except that the owner of a copyright in a sound recording shall not be liable for a digital phonorecord delivery by a third party if the owner of the copyright in the sound recording

does not license the distribution of a phonorecord of the nondramatic musical work.

(J) Nothing in section 1008 shall be construed to prevent the exercise of the rights and remedies allowed by this paragraph, paragraph (6), and chapter 5 in the event of a digital phonorecord delivery, except that no action alleging infringement of copyright may be brought under this title against a manufacturer, importer or distributor of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or against a consumer, based on the actions described in such section.

(K) Nothing in this section annuls or limits (i) the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under sections 106(4) and 106(6), (ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under sections 106(1) and 106(3), including by means of a digital phonorecord delivery, or (iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(L) The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under section 106(1) through (5) with respect to such transmissions and retransmissions.

(4) A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.

(5) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall

also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(6) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(d) DEFINITION.—As used in this section, the following term has the following meaning: A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2561; Pub. L. 98-450, § 3, Oct. 4, 1984, 98 Stat. 1727; Pub. L. 104-39, § 4, Nov. 1, 1995, 109 Stat. 344; Pub. L. 105-80, §§ 4, 10, 12(a)(7), Nov. 13, 1997, 111 Stat. 1531, 1534.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The provisions of section 1(e) and 101(e) of the present law [sections 1(e) and 101(e) of former title 17], establishing a system of compulsory licensing for the making and distribution of phonorecords of copyrighted music, are retained with a number of modifications and clarifications in section 115 of the bill. Under these provisions, which represented a compromise of the most controversial issue of the 1909 act, a musical composition that has been reproduced in phonorecords with the permission of the copyright owner may generally be reproduced in phonorecords by another person, if that person notifies the copyright owner and pays a specified royalty.

The fundamental question of whether to retain the compulsory license or to do away with it altogether was a major issue during earlier stages of the program for general revision of the copyright law. At the hearings it was apparent that the argument on this point had shifted, and the real issue was not whether to retain the compulsory license but how much the royalty rate under it should be. The arguments for and against retention of the compulsory license are outlined at

pages 66-67 of this Committee's 1967 report (H. Rept. No. 83, 90th Cong., 1st Sess.). The Committee's conclusion on this point remains the same as in 1967: "that a compulsory licensing system is still warranted as a condition for the rights of reproducing and distributing phonorecords of copyrighted music," but "that the present system is unfair and unnecessarily burdensome on copyright owners, and that the present statutory rate is too low."

Availability and Scope of Compulsory License. Subsection (a) of section 115 deals with three doubtful questions under the present law: (1) the nature of the original recording that will make the work available to others for recording under a compulsory license; (2) the nature of the sound recording that can be made under a compulsory license; and (3) the extent to which someone acting under a compulsory license can depart from the work as written or recorded without violating the copyright owner's right to make an "arrangement" or other derivative work. The first two of these questions are answered in clause (1) of section 115(a), and the third is the subject of clause (2).

The present law, though not altogether clear, apparently bases compulsory licensing on the making or licensing of the first recording, even if no authorized records are distributed to the public. The first sentence of section 115(a)(1) would change the basis for compulsory licensing to authorized public distribution of phonorecords (including disks and audio tapes but not the sound tracks or other sound records accompanying a motion picture or other audiovisual work). Under the clause, a compulsory license would be available to anyone as soon as "phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner."

The second sentence of clause (1), which has been the subject of some debate, provides that "a person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use." This provision was criticized as being discriminatory against background music systems, since it would prevent a background music producer from making recordings without the express consent of the copyright owner; it was argued that this could put the producer at a great competitive disadvantage with performing rights societies, allow discrimination, and destroy or prevent entry of businesses. The committee concluded, however, that the purpose of the compulsory license does not extend to manufacturers of phonorecords that are intended primarily for commercial use, including not only broadcasters and jukebox operators but also background music services.

The final sentence of clause (1) provides that a person may not obtain a compulsory license for use of the work in the duplication of a sound recording made by another, unless the sound recording being duplicated was itself fixed lawfully and the making of phonorecords duplicated from it was authorized by the owner of copyright in the sound recording (or, if the recording was fixed before February 15, 1972, by the voluntary or compulsory licensee of the music used in the recording). The basic intent of this sentence is to make clear that a person is not entitled to a compulsory license of copyrighted musical works for the purpose of making an unauthorized duplication of a musical sound recording originally developed and produced by another. It is the view of the Committee that such was the original intent of the Congress in enacting the 1909 Copyright Act, and it has been so construed by the 3d, 5th, 9th and 10th Circuits in the following cases: *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th Cir.), cert. denied, 409 U.S. 847 (1972) [93 S.Ct. 52, 34 L.Ed.2d 88]; *Edward B. Marks Music Corp. v. Colorado Magnetics, Inc.*, 497 F.2d 285, aff'd on rehearing en banc, 497 F.2d 292 (10th Cir. 1974), cert. denied, 419 U.S. 1120 (1975) [95 S.Ct. 801, 42 L.Ed.2d 819]; *Jondora Music Publishing Co. v. Melody Recordings, Inc.*, 506 F.2d 392 (3d Cir. 1974, as amended 1975), cert. denied, 421 U.S. 1012 (1975) [95 S.Ct. 2417, 44 L.Ed.2d 680]; and *Fame Publishing Co. v. Alabama Custom Tape, Inc.*, 507

F.2d 667 (5th Cir.), cert. denied, 423 U.S. 841 (1975) [96 S.Ct. 73, 46 L.Ed.2d 61].

Under this provision, it would be possible to obtain a compulsory license for the use of copyrighted music under section 115 if the owner of the sound recording being duplicated authorizes its duplication. This does not, however, in any way require the owner of the original sound recording to grant a license to duplicate the original sound recording. It is not intended that copyright protection for sound recordings be circumscribed by requiring the owners of sound recordings to grant a compulsory license to unauthorized duplicators or others.

The second clause of subsection (a) is intended to recognize the practical need for a limited privilege to make arrangements of music being used under a compulsory license, but without allowing the music to be perverted, distorted, or travestied. Clause (2) permits arrangements of a work "to the extent necessary to conform it to the style or manner of interpretation of the performance involved," so long as it does not "change the basic melody or fundamental character of the work." The provision also prohibits the compulsory licensee from claiming an independent copyright in his arrangement as a "derivative work" without the express consent of the copyright owner.

Procedure for Obtaining Compulsory License. Section 115(b)(1) requires anyone who wishes to take advantage of the compulsory licensing provisions to serve a "notice of intention to obtain a compulsory license," which is much like the "notice of intention to use" required by the present law. Under section 115, the notice must be served before any phonorecords are distributed, but service can take place "before or within 30 days after making" any phonorecords. The notice is to be served on the copyright owner, but if the owner is not identified in the Copyright Office records, "it shall be sufficient to file the notice of intention in the Copyright Office."

The Committee deleted clause (2) of section 115(b) of S. 22 as adopted by the Senate. The provision was a vestige of jukebox provisions in earlier bills, and its requirements no longer served any useful purpose.

Clause (2) [formerly clause (3)] of section 115(b) [cl. (2) of subsec. (b) of this section] provides that "failure to serve or file the notice required by clause (1) * * * forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506." The remedies provided in section 501 are those applicable to infringements generally.

Royalty Payable Under Compulsory License. Identification of Copyright Owner.—Under the present law a copyright owner is obliged to file a "notice of use" in the Copyright Office, stating that the initial recording of the copyrighted work has been made or licensed, in order to recover against an unauthorized record manufacturer. This requirement has resulted in a technical loss of rights in some cases, and serves little or no purpose where the registration and assignment records of the Copyright Office already show the facts of ownership. Section 115(c)(1) therefore drops any formal "notice of use" requirements and merely provides that, "to be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office." On the other hand, since proper identification is an important precondition of recovery, the bill further provides that "the owner is entitled to royalties for phonorecords manufactured and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed."

Basis of Royalty.—Under the present statute the specified royalty is payable "on each such part manufactured," regardless of how many "parts" (i.e., records) are sold. This basis for calculating the royalty has been revised in section 115(c)(2) to provide that "the royalty under a compulsory license shall be payable for every

phonorecord made and distributed in accordance with the license.” This basis is more compatible with the general practice in negotiated licenses today. It is unjustified to require a compulsory licensee to pay license fees on records which merely go into inventory, which may later be destroyed, and from which the record producer gains no economic benefit.

It is intended that the Register of Copyrights will prescribe regulations insuring that copyright owners will receive full and prompt payment for all phonorecords made and distributed. Section 115(c)(2) states that “a phonorecord is considered ‘distributed’ if the person exercising the compulsory license has voluntarily and permanently parted with its possession.” For this purpose, the concept of “distribution” comprises any act by which the person exercising the compulsory license voluntarily relinquishes possession of a phonorecord (considered as a fungible unit), regardless of whether the distribution is to the public, passes title, constitutes a gift, or is sold, rented, leased, or loaned, unless it is actually returned and the transaction cancelled. Neither involuntary relinquishment, as through theft or fire, nor the destruction of unwanted records, would constitute “distribution.”

The term “made” is intended to be broader than “manufactured,” and to include within its scope every possible manufacturing or other process capable of reproducing a sound recording in phonorecords. The use of the phrase “made and distributed” establishes the basis upon which the royalty rate for compulsory licensing under section 115 is to be calculated, but it is in no way intended to weaken the liability of record pressers and other manufacturers and makers of phonorecords for copyright infringement where the compulsory licensing requirements have not been met. As under the present law, even if a presser, manufacturer, or other maker had no role in the distribution process, that person would be regarded as jointly and severally liable in a case where the court finds that infringement has taken place because of failure to comply with the provisions of section 115.

Under existing practices in the record industry, phonorecords are distributed to wholesalers and retailers with the privilege of returning unsold copies for credit or exchange. As a result, the number of recordings that have been “permanently” distributed will not usually be known until some time—six or seven months on the average—after the initial distribution. In recognition of this problem, it has become a well-established industry practice, under negotiated licenses, for record companies to maintain reasonable reserves of the mechanical royalties due the copyright owners, against which royalties on the returns can be offset. The Committee recognizes that this practice may be consistent with the statutory requirements for monthly compulsory license accounting reports, but recognizes the possibility that, without proper safeguards, the maintenance of such reserves could be manipulated to avoid making payments of the full amounts owing to copyright owners. Under these circumstances, the regulations prescribed by the Register of Copyrights should contain detailed provisions ensuring that the ultimate disposition of every phonorecord made under a compulsory license is accounted for, and that payment is made for every phonorecord “voluntarily and permanently” distributed. In particular, the Register should prescribe a point in time when, for accounting purposes under section 115, a phonorecord will be considered “permanently distributed,” and should prescribe the situations in which a compulsory licensee is barred from maintaining reserves (e.g., situations in which the compulsory licensee has frequently failed to make payments in the past.)

Rate of Royalty.—A large preponderance of the extensive testimony presented to the Committee on section 115 was devoted to the question of the amount of the statutory royalty rate. An extensive review and analysis of the testimony and arguments received on this question appear in the 1974 Senate report (S. Rep. No. 94-473) at page 71-94.

While upon initial review it might be assumed that the rate established in 1909 would not be reasonable at the present time, the committee believes that an increase in the mechanical royalty rate must be justified on the basis of existing economic conditions and not on the mere passage of 67 years. Following a thorough analysis of the problem, the Committee considers that an increase of the present two-cent royalty to a rate of 2½ cents (or .6 of one cent per minute or fraction of playing time) is justified. This rate will be subject to review by the Copyright Royalty Commission, as provided by section 801, in 1980 and at 10-year intervals thereafter.

Accounting and Payment of Royalties; Effect of Default. Clause (3) of Section 115(c) provides that royalty payments are to be made on a monthly basis, in accordance with requirements that the Register of Copyrights shall prescribe by regulation. In order to increase the protection of copyright proprietors against economic harm from companies which might refuse or fail to pay their just obligations, compulsory licensees will also be required to make a detailed cumulative annual statement of account, certified by a Certified Public Accountant.

A source of criticism with respect to the compulsory licensing provisions of the present statute has been the rather ineffective sanctions against default by compulsory licensees. Clause (4) of section 115(c) corrects this defect by permitting the copyright owner to serve written notice on a defaulting licensee, and by providing for termination of the compulsory license if the default is not remedied within 30 days after notice is given. Termination under this clause “renders either the making or the distribution, or both, of all phonorecords for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.”

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (c)(3)(B), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The date of enactment of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsec. (c)(3)(K), is the date of enactment of Pub. L. 104-39, which was approved Nov. 1, 1995.

AMENDMENTS

1997—Subsec. (c)(3)(D). Pub. L. 105-80, §4, struck out “and publish in the Federal Register” before “a schedule of rates and terms”.

Subsec. (c)(3)(E)(i). Pub. L. 105-80, §12(a)(7)(A), substituted “paragraphs (1) and (3) of section 106” for “sections 106(1) and (3)” in two places.

Subsec. (c)(3)(E)(ii)(II). Pub. L. 105-80, §12(a)(7)(A), substituted “paragraphs (1) and (3) of section 106” for “sections 106(1) and 106(3)”.

Subsec. (d). Pub. L. 105-80, §10, amended directory language of Pub. L. 104-39, §4. See 1995 Amendment note below.

1995—Subsec. (a)(1). Pub. L. 104-39, §4(1), substituted “any other person, including those who make phonorecords or digital phonorecord deliveries,” for “any other person” in first sentence and inserted before period at end of second sentence “, including by means of a digital phonorecord delivery”.

Subsec. (c)(2). Pub. L. 104-39, §4(2), inserted “and other than as provided in paragraph (3),” after “For this purpose,” in second sentence.

Subsec. (c)(3) to (6). Pub. L. 104-39, §4(3), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (d). Pub. L. 104-39, §4(4), as renumbered by Pub. L. 105-80, §10, added subsec. (d).

1984—Subsec. (c)(3) to (5). Pub. L. 98-450 added par. (3) and redesignated existing pars. (3) and (4) as (4) and (5), respectively.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

PERSONS OPERATING UNDER PREDECESSOR COMPULSORY
LICENSING PROVISIONS

Section 106 of Pub. L. 94-553 provided that: “In any case where, before January 1, 1978, a person has lawfully made parts of instruments serving to reproduce mechanically a copyrighted work under the compulsory license provisions of section 1(e) of title 17 as it existed on December 31, 1977, such person may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by the first section of this Act [this section]. However, such parts made on or after January 1, 1978, constitute phonorecords and are otherwise subject to the provisions of said section 115 [this section].”

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Determinations concerning adjustment of reasonable copyright royalty rates by Copyright Royalty Tribunal, see section 801 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

Fee for notice of intention to make phonorecords, see section 708 of this title.

Institution and conclusion of proceedings concerning adjustment of royalty rates as provided in this section, see section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 112, 501, 511, 708, 801, 802, 803 of this title; title 18 section 2319.

§ 116. Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) **APPLICABILITY OF SECTION.**—This section applies to any nondramatic musical work embodied in a phonorecord.

(b) **NEGOTIATED LICENSES.**—

(1) **AUTHORITY FOR NEGOTIATIONS.**—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) **ARBITRATION.**—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).

(c) **LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS.**—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by a copyright arbitration royalty panel.

(d) **DEFINITIONS.**—As used in this section, the following terms mean the following:

(1) A “coin-operated phonorecord player” is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An “operator” is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(Added Pub. L. 100-568, §4(a)(4), Oct. 31, 1988, 102 Stat. 2855, §116A; renumbered §116 and amended Pub. L. 103-198, §3(b)(1), Dec. 17, 1993, 107 Stat. 2309; Pub. L. 105-80, §5, Nov. 13, 1997, 111 Stat. 1531.)

PRIOR PROVISIONS

A prior section 116, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2562; Pub. L. 100-568, §4(b)(1), Oct. 31, 1988, 102 Stat. 2857, related to scope of exclusive rights in nondramatic musical works and compulsory licenses for public performances by means of coin-operated phonorecord players, prior to repeal by Pub. L. 103-198, §3(a), Dec. 17, 1993, 107 Stat. 2309.

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105-80, §5(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2) **ARBITRATION.**—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.”

Subsec. (d). Pub. L. 105-80, §5(2), added subsec. (d).

1993—Pub. L. 103-198, §3(b)(1)(A), renumbered section 116A of this title as this section.

Subsec. (b). Pub. L. 103-198, §3(b)(1)(B), (C), redesignated subsec. (c) as (b), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in two places in par. (2), and struck out former subsec. (b) which related to limitation on exclusive right if licenses not negotiated.

Subsec. (c). Pub. L. 103-198, §3(b)(1)(B), (D), redesignated subsec. (d) as (c), in heading substituted “Arbitration Royalty Panel” for “Royalty Tribunal”, and in text substituted “subsection (b)” for “subsection (c)” and “a copyright arbitration royalty panel” for “the Copyright Royalty Tribunal”.

Subsecs. (d) to (g). Pub. L. 103-198, §3(b)(1)(B), (E), redesignated subsec. (d) as (c) and struck out subsecs. (e) to (g) which provided, in subsec. (e), for a schedule for negotiation of licenses, in subsec. (f), for a suspension of various ratemaking activities by the Copyright Roy-

alty Tribunal, and in subsec. (g), for transition provisions and retention of Copyright Royalty Tribunal jurisdiction.

EFFECTIVE DATE

Section effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions as in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 801, 802, 803 of this title; title 18 section 2319.

[§ 116A. Renumbered § 116]

§ 117. Limitations on exclusive rights: Computer programs

(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) DEFINITIONS.—For purposes of this section—

(1) the “maintenance” of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the “repair” of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 96-517, § 10(b), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 105-304, title III, § 302, Oct. 28, 1998, 112 Stat. 2887.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

As the program for general revision of the copyright law has evolved, it has become increasingly apparent that in one major area the problems are not sufficiently developed for a definitive legislative solution. This is the area of computer uses of copyrighted works: the use of a work “in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information.” The Commission on New Technological Uses is, among other things, now engaged in making a thorough study of the emerging patterns in this field and it will, on the basis of its findings, recommend definitive copyright provisions to deal with the situation.

Since it would be premature to change existing law on computer uses at present, the purpose of section 117 is to preserve the status quo. It is intended neither to cut off any rights that may now exist, nor to create new rights that might be denied under the Act of 1909 or under common law principles currently applicable.

The provision deals only with the exclusive rights of a copyright owner with respect to computer uses, that is, the bundle of rights specified for other types of uses in section 106 and qualified in sections 107 through 116 and 118. With respect to the copyright-ability of computer programs, the ownership of copyrights in them, the term of protection, and the formal requirements of the remainder of the bill, the new statute would apply.

Under section 117, an action for infringement of a copyrighted work by means of a computer would necessarily be a federal action brought under the new title 17. The court, in deciding the scope of exclusive rights in the computer area, would first need to determine the applicable law, whether State statutory or common law or the Act of 1909. Having determined what law was applicable, its decision would depend upon its interpretation of what that law was on the point on the day before the effective date of the new statute.

AMENDMENTS

1998—Pub. L. 105-304 designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsecs. (c) and (d).

1980—Pub. L. 96-517 substituted provision respecting limitations on exclusive rights in connection with computer programs for prior provision enunciating scope of exclusive rights and use of the work in conjunction with computers and similar information systems and declaring owner of copyright in a work without any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether this title or the common law or statutes of a State, in effect on Dec. 31, 1977, as held applicable and construed by the court in an action brought under this title.

CROSS REFERENCES

Exclusive rights in copyrighted work, see section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511 of this title; title 18 section 2319.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Librarian of Congress proposed licenses covering such activities with respect to such works. The Librarian of Congress shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Librarian of Congress shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements, voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress. In establishing such rates and terms the copyright arbitration royalty panel may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1997, and at five-year intervals thereafter, in accordance with regulations that the Librarian of Congress shall prescribe.

(d) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2), a public broadcast-

ing entity may, upon compliance with the provisions of this section, including the rates and terms established by a copyright arbitration royalty panel under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this paragraph: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

(1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.

(2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term “public broadcasting entity” means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (d).

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 103-198, § 4, Dec. 17, 1993, 107 Stat. 2309.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

General Background. During its consideration of revision legislation in 1975, the Senate Judiciary Committee adopted an amendment offered by Senator Charles McC. Mathias. The amendment, now section 118 of the Senate bill [this section], grants to public broadcasting a compulsory license for use of nondramatic literary and musical works, as well as pictorial, graphic, and sculptural works, subject to payment of reasonable royalty fees to be set by the Copyright Royalty Tribunal established by that bill. The Mathias amendment requires that public broadcasters, at periodic intervals, file a notice with the Copyright Office containing information required by the Register of Copyrights and deposit a statement of account and the total royalty fees for the period covered by the statement. In July of each year all persons having a claim to such fees are to file their claims with the Register of Copyrights. If no controversy exists, the Register would distribute the royalties to the various copyright owners and their agents after deducting reasonable administrative costs; controversies are to be settled by the Tribunal.

On July 10, 1975, the House Subcommittee heard testimony on the Mathias amendment from representatives of public broadcasters, authors, publishers, and music performing rights societies. The public broadcasters pointed to Congressional concern for the development of their activities as evidenced by the Public Broadcasting Act [47 U.S.C. 390 et seq.]. They urged that a compulsory license was essential to assure public broadcasting broad access to copyrighted materials at reasonable royalties and without administratively cumbersome and costly “clearance” problems that would impair the vitality of their operations. The opponents of the amendment argued that the nature of public broadcasting has changed significantly in the past decade, to the extent that it now competes with commercial broadcasting as a national entertainment and cultural medium. They asserted that the performing rights society arrangements under which copyrighted music is licensed for performance removed any problem in clearing music for broadcasting, and that voluntary agreements could adequately resolve the copyright problems feared by public broadcasters, at less expense and burden than the compulsory license, for synchronization and literary rights. The authors of literary works stressed that a compulsory licensing system would deny them the fundamental right to control the use of their works and protect their reputation in a major communications medium.

General Policy Considerations. The Committee is cognizant of the intent of Congress, in enacting the Public Broadcasting Act on November 7, 1967 [47 U.S.C. 390 et seq.], that encouragement and support of noncommercial broadcasting is in the public interest. It is also aware that public broadcasting may encounter prob-

lems not confronted by commercial broadcasting enterprises, due to such factors as the special nature of programming, repeated use of programs, and, of course, limited financial resources. Thus, the Committee determined that the nature of public broadcasting does warrant special treatment in certain areas. However, the Committee did not feel that the broad compulsory license provided in the Senate bill is necessary to the continued successful operation of public broadcasting. In addition, the Committee believes that the system provided in the Senate bill for the deposit of royalty fees with the Copyright Office for distribution to claimants, and the resolution of disputes over such distribution by a statutory tribunal, can be replaced by payments directly between the parties, without the intervention of government machinery and its attendant administrative costs.

In general, the Committee amended the public broadcasting provisions of the Senate bill toward attainment of the objective clearly stated in the Report of the Senate Judiciary Committee, namely, that copyright owners and public broadcasters be encouraged to reach voluntary private agreements.

Procedures. Not later than thirty days following the publication by the President of the notice announcing the initial appointments to the Copyright Royalty Commission (specified in Chapter 8 [§801 et seq. of this title]), the Chairman of the Commission is to publish notice in the Federal Register of the initiation of proceedings to determine “reasonable terms and rates” for certain uses of published nondramatic musical works and published pictorial, graphic and sculptural works, during a period ending on December 31, 1982.

Copyright owners and public broadcasting entities that do not reach voluntary agreement are bound by the terms and rates established by the Commission, which are to be published in the Federal Register within six months of the notice of initiation of proceedings. During the period between the effective date of the Act [Jan. 1, 1978] and the publication of the rates and terms, the Committee has preserved the status quo by providing, in section 118(b)(4), that the Act does not afford to copyright owners or public broadcasting entities any greater or lesser rights with respect to the relevant uses of nondramatic musical works and pictorial, graphic, and sculptural works than those afforded under the law in effect on December 31, 1977.

License agreements that have been voluntarily negotiated supersede, as between the parties to the agreement, the terms and rates established by the Commission, provided that copies of the agreements are properly filed with the Copyright Office within 30 days of execution. Under clause (2) of section 118(b), the agreements may be negotiated “at any time”—whether before, during, or after determinations by the Commission.

Under section 118(c), the procedures for the Commission’s establishing such rates and terms are to be repeated in the last half of 1982 and every five years thereafter.

Establishment of Reasonable Terms and Rates. In establishing reasonable terms and rates for public broadcasting use of the specified works, the Commission, under clause (b)(1) of section 118 is to consider proposals timely submitted to it, as well as “any other relevant information”, including that put forward for its consideration “by any interested party.”

The Committee does not intend that owners of copyrighted material be required to subsidize public broadcasting. It is intended that the Commission assure a fair return to copyright owners without unfairly burdening public broadcasters. Section 118(b)(3) provides that “the Commission may consider the rates for comparable circumstances under voluntary license agreements.” The Commission is also expected to consider both the general public interest in encouraging the growth and development of public broadcasting, and the “promotion of science and the useful arts” through the encouragement of musical and artistic creation.

The Committee anticipates that the “terms” established by the Commission shall include provisions as to

acceptable methods of payment of royalties by public broadcasting entities to copyright owners. For example, where the whereabouts of the copyright owner may not be readily known, the terms should specify the nature of the obligation of the public broadcasting entity to locate the owner, or to set aside or otherwise assure payment of appropriate royalties, should he or she appear and make a claim. Section 118(b)(3) requires the Commission "to establish requirements by which copyright owners may receive reasonable notice of the use of their works." The Committee intends that these requirements shall not impose undue hardships on public broadcasting entities and, in the above illustration, shall provide for the specific termination of any period during which the public broadcasting entity is required to set aside payments. It is expected that, in some cases, especially in the area of pictorial, graphic, and sculptural works, the whereabouts of the owners of copyright may not be known and they may never appear to claim payment of royalties.

The Commission is also to establish record keeping requirements for public broadcasting entities in order to facilitate the identification, calculation, allocation and payment of claims and royalties.

Works Affected. Under sections 118(b) and (e) of the Committee's amendment, the establishment of rates and terms by the Copyright Royalty Commission pertains only to the use of published nondramatic musical works, and published pictorial, graphic, and sculptural works. As under the Senate bill; rights in plays, operas, ballet and other stage presentations, motion pictures, and other audiovisual works are not affected.

Section 118(f) is intended to make clear that this section does not permit unauthorized use, beyond the limits of section 107, of individual frames from a filmstrip or any other portion of any audiovisual work. Additionally, the application of this section to pictorial, graphic, and sculptural works does not extend to the production of transmission programs drawn to any substantial extent from a compilation of such works.

The Committee also concluded that the performance of nondramatic literary works should not be subject to Commission determination. It was particularly concerned that a compulsory license for literary works would result in loss of control by authors over the use of their work in violation of basic principles of artistic and creative freedom. It is recognized that copyright not only provides compensation to authors, but also protection as to how and where their works are used. The Committee was assured by representatives of authors and publishers that licensing arrangements for readings from their books, poems, and other works on public broadcasting programs for reasonable compensation and under reasonable safeguards for authors' rights could be worked out in private negotiation. The Committee strongly urges the parties to work toward mutually acceptable licenses; to facilitate their negotiations and aid in the possible establishment of clearance mechanisms and rates, the Committee's amendment provides the parties, in section 118(e)(1), with an appropriately limited exemption from the antitrust laws [15 U.S.C. 1 et seq.].

The Committee has also provided, in paragraph (2) of clause (e), that on January 3, 1980, the Register of Copyrights, after consultation with the interested parties, shall submit a report to Congress on the extent to which voluntary licensing arrangements have been reached with respect to public broadcast use of nondramatic literary works, and present legislative or other recommendations, if warranted.

The use of copyrighted sound recordings in educational television and radio programs distributed by or through public broadcasting entities is governed by section 114 and is discussed in connection with that section.

Activities Affected. Section 118(d) specifies the activities which may be engaged in by public broadcasting entities under terms and rates established by the Commission. These include the performance or display of published nondramatic musical works, and of published

pictorial, graphic, and sculptural works, in the course of transmissions by noncommercial educational broadcast stations; and the production, reproduction, and distribution of transmission programs including such works by nonprofit organizations for the purpose of such transmissions. It is the intent of the Committee that "interconnection" activities serving as a technical adjunct to such transmissions, such as the use of satellites or microwave equipment, be included within the specified activities.

Paragraph (3) of clause (d) also includes the reproduction, simultaneously with transmission, of public broadcasting programs by governmental bodies or nonprofit institutions, and the performance or display of the contents of the reproduction under the conditions of section 110(1). However, the reproduction so made must be destroyed at the end of seven days from the transmission.

This limited provision for unauthorized simultaneous or off-the-air reproduction is limited to nondramatic musical works and pictorial, graphic and sculptural works included in public broadcasting transmissions. It does not extend to other works included in the transmissions, or to the entire transmission program.

It is the intent of the Committee that schools be permitted to engage in off-the-air reproduction to the extent and under the conditions provided in [section] 118(d)(3); however, in the event a public broadcasting station or producer makes the reproduction and distributes a copy to the school, the station or producer will not be held liable for the school's failure to destroy the reproduction, provided it has given notice of the requirement of destruction. In such a case the school itself, although it did not engage in the act of reproduction, is deemed an infringer fully subject to the remedies provided in Chapter 5 of the Act [§501 et seq. of this title]. The establishment of standards for adequate notice under this provision should be considered by the Commission.

Section 118(f) makes it clear that the rights of performance and other activities specified in subsection (d) do not extend to the unauthorized dramatization of a nondramatic musical work.

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (b) and (e)(1), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-198, §4(1)(A), (B), struck out first two sentences which read as follows: "Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results.", and in third sentence substituted "published nondramatic musical works and published pictorial, graphic, and sculptural works" for "works specified by this subsection".

Subsec. (b)(1). Pub. L. 103-198, §4(1)(C), struck out "within one hundred and twenty days after publication of the notice specified in this subsection," after "broadcasting entity may" and substituted "Librarian of Congress" for "Copyright Royalty Tribunal" wherever appearing.

Subsec. (b)(2). Pub. L. 103-198, §4(1)(D), substituted "Librarian of Congress" for "Tribunal".

Subsec. (b)(3). Pub. L. 103-198, §4(1)(E)(ii), (iii), in second sentence, substituted "copyright arbitration roy-

alty panel” for “Copyright Royalty Tribunal” and “paragraph (2)” for “clause (2) of this subsection”, and in last sentence, substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Pub. L. 103-198, §4(1)(E)(i), substituted first sentence for former first sentence which read as follows: “Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.”

Subsec. (b)(4). Pub. L. 103-198, §4(1)(F), struck out par. (4) which read as follows: “With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.”

Subsec. (c). Pub. L. 103-198, §4(2), substituted “1997” for “1982” and “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (d). Pub. L. 103-198, §4(3), in introductory provisions, struck out “to the transitional provisions of subsection (b)(4), and” after “Subject” and substituted “a copyright arbitration royalty panel” for “the Copyright Royalty Tribunal”, and in pars. (2) and (3), substituted “paragraph” for “clause” wherever appearing.

Subsec. (g). Pub. L. 103-198, §4(4), substituted “paragraph” for “clause”.

EFFECTIVE DATE

Section effective Oct. 19, 1976, see section 102 of Pub. L. 94-553, set out as a note preceding section 101 of this title.

CROSS REFERENCES

Determinations as to reasonable terms and rates of royalty payments by Copyright Royalty Tribunal, see section 801 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

Institution and conclusion of proceedings concerning the determination of reasonable terms and rates of royalty payments, see section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 114, 501, 504, 511, 801, 802, 803 of this title; title 18 section 2319.

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a

distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(4) **WILLFUL ALTERATIONS.**—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) **VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.**—

(A) **INDIVIDUAL VIOLATIONS.**—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

(B) **PATTERN OF VIOLATIONS.**—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out.

(C) **PREVIOUS SUBSCRIBERS EXCLUDED.**—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) **BURDEN OF PROOF.**—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.

(6) **DISCRIMINATION BY A SATELLITE CARRIER.**—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

(7) **GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.**—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

(8) **TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.**—

(A) **IN GENERAL.**—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—

(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

(B) **EFFECT OF MEASUREMENT.**—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—

(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement with-

in 60 days after receipt of the measurement results and a statement of the costs of the measurement.

(C) LIMITATION ON MEASUREMENTS.—(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network's station local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—

(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or

(II) the household is an unserved household, the station shall pay the costs of the measurement.

(9) LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

(A) a network station challenging such eligibility shall, within 60 days after receipt of

the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

(10) INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semi-annual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation; and

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations;

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 6 cents; and

(iii) adding together the totals computed under clauses (i) and (ii).

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the

reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian of Congress finds the existence of a controversy, the Librarian of Congress shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective unless a royalty fee is established under paragraph (2) or (3) of this subsection.

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1999, or in accordance with the terms of the agreement, whichever is later.

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before January 1, 1997, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such arbitration proceeding shall be conducted under chapter 8.

(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(i) the competitive environment in which such programming is distributed, the cost

of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(ii) the economic impact of such fees on copyright owners and satellite carriers; and

(iii) the impact on the continued availability of secondary transmissions to the public.

(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), or

(ii) is established by the Librarian of Congress under section 802(f),

shall become effective as provided in section 802(g) or July 1, 1997, whichever is later.

(D) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in subparagraph (C) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

(d) DEFINITIONS.—As used in this section—

(1) DISTRIBUTOR.—The term “distributor” means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

(2) NETWORK STATION.—The term “network station” means—

(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).

(3) PRIMARY NETWORK STATION.—The term “primary network station” means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term “primary transmission” has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term “private home viewing” means the viewing, for private use in a household by means of satellite reception equipment which is operated

by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term “satellite carrier” means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(7) SECONDARY TRANSMISSION.—The term “secondary transmission” has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER.—The term “subscriber” means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) SUPERSTATION.—The term “superstation” means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term “unserved household”, with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(11) LOCAL MARKET.—The term “local market” means the area encompassed within a network station’s predicted Grade B contour as that contour is defined by the Federal Communications Commission.

(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private

home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.

(Added Pub. L. 100-667, title II, §202(2), Nov. 16, 1988, 102 Stat. 3949; amended Pub. L. 103-198, §5, Dec. 17, 1993, 107 Stat. 2310; Pub. L. 103-369, §2, Oct. 18, 1994, 108 Stat. 3477; Pub. L. 104-39, §5(c), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105-80, §§1, 12(a)(8), Nov. 13, 1997, 111 Stat. 1529, 1535.)

TERMINATION OF SECTION

For termination of section by section 4(a) of Pub. L. 103-369, see Termination of Section note below.

REFERENCES IN TEXT

For effective date of the Satellite Home Viewer Act of 1994, referred to in subsec. (a)(8)(C)(i), see section 6 of Pub. L. 103-369, set out as an Effective and Termination Dates of 1994 Amendment note below.

The Communications Act of 1934, referred to in subsec. (d)(6), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Section 397 of the Act is classified to section 397 of Title 47. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

1997—Subsec. (a)(5)(C). Pub. L. 105-80, §1(3), amended Pub. L. 103-369, §2(5)(A). See 1994 Amendment note below.

Subsec. (b)(1)(B)(i). Pub. L. 105-80, §1(1), amended Pub. L. 103-369, §2(3)(A). See 1994 Amendment note below.

Subsec. (c)(1). Pub. L. 105-80, §12(a)(8), which directed substitution of “unless” for “until unless” before “a royalty fee”, could not be executed because “until” did not appear subsequent to amendment by Pub. L. 103-369, §2(4)(A), as amended by Pub. L. 105-80, §1(2). See 1994 Amendment note below.

Pub. L. 105-80, §1(2), amended Pub. L. 103-369, §2(4)(A). See 1994 Amendment note below.

Subsec. (c)(2)(A), (D), (3)(A)–(C). Pub. L. 105-80, §1(2), amended Pub. L. 103-369, §2(4). See 1994 Amendment notes below.

1995—Subsec. (a)(1), (2)(A). Pub. L. 104-39 inserted “and section 114(d)” after “of this subsection”.

1994—Subsec. (a)(2)(C). Pub. L. 103-369, §2(1), struck out “90 days after the effective date of the Satellite Home Viewer Act of 1988, or” before “90 days after commencing”, “whichever is later,” before “submit to the network that owns”, and “, on or after the effective date of the Satellite Home Viewer Act of 1988,” after “Register of Copyrights”, and inserted “name and” after “identifying (by)” in two places.

Subsec. (a)(5)(C). Pub. L. 103-369, §2(5)(A), as amended by Pub. L. 105-80, §1(3), substituted “November 16, 1988” for “the date of the enactment of the Satellite Home Viewer Act of 1988”.

Subsec. (a)(5)(D). Pub. L. 103-369, §2(2), added subpar. (D).

Subsec. (a)(8) to (10). Pub. L. 103-369, §2(5)(B), added pars. (8) to (10).

Subsec. (b)(1)(B)(i). Pub. L. 103-369, §2(3)(A), as amended by Pub. L. 105-80, §1(1), substituted “17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations” for “12 cents”.

Subsec. (b)(1)(B)(ii). Pub. L. 103-369, §2(3)(B), substituted “6 cents” for “3 cents”.

Subsec. (c)(1). Pub. L. 103-369, §2(4)(A), as amended by Pub. L. 105-80, §1(2), struck out “until December 31, 1992,” before “unless a royalty fee”, substituted “paragraph (2) or (3) of this subsection” for “paragraph (2), (3), or (4) of this subsection”, and struck out at end “After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).”

Subsec. (c)(2)(A). Pub. L. 103-369, §2(4)(B)(i), as amended by Pub. L. 105-80, §1(2), substituted “July 1, 1996” for “July 1, 1991”.

Subsec. (c)(2)(D). Pub. L. 103-369, §2(4)(B)(ii), as amended by Pub. L. 105-80, §1(2), substituted “December 31, 1999, or in accordance with the terms of the agreement, whichever is later” for “December 31, 1994”.

Subsec. (c)(3)(A). Pub. L. 103-369, §2(4)(C)(i), as amended by Pub. L. 105-80, §1(2), substituted “January 1, 1997” for “December 31, 1991”.

Subsec. (c)(3)(B). Pub. L. 103-369, §2(4)(C)(ii), as amended by Pub. L. 105-80, §1(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

“(B) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

“(i) To maximize the availability of creative works to the public.

“(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

“(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.”

Subsec. (c)(3)(C). Pub. L. 103-369, §2(4)(C)(iii), as amended by Pub. L. 105-80, §1(2), inserted before period at end “or July 1, 1997, whichever is later”.

Subsec. (d)(2). Pub. L. 103-369, §2(6)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2) NETWORK STATION.—The term ‘network station’ has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.”

Subsec. (d)(6). Pub. L. 103-369, §2(6)(B), inserted “and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations” after “Federal Communications Commission”.

Subsec. (d)(11). Pub. L. 103-369, §2(6)(C), added par. (11).

1993—Subsec. (b)(1). Pub. L. 103-198, §5(1)(A), struck out “, after consultation with the Copyright Royalty Tribunal,” in introductory provisions after “Register shall” and in subpar. (A) after “Copyrights may”.

Subsec. (b)(2), (3). Pub. L. 103-198, §5(1)(B), (C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (b)(4). Pub. L. 103-198, §5(1)(D), in subpar. (A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” after “claim with the” and for “Tribunal” after “requirements that the”, in subpar. (B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “shall determine” and for “Tribunal” wherever else appearing, and substituted “convene a copyright arbitration royalty panel” for “conduct a proceeding”, and in subpar. (C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal”.

Subsec. (c). Pub. L. 103-198, §5(2)(A), substituted “Adjustment” for “Determination” in heading.

Subsec. (c)(2). Pub. L. 103-198, §5(2)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in subpars. (A) and (B).

Subsec. (c)(3)(A). Pub. L. 103-198, §5(2)(C)(i), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” and substituted last sentence for former last sentence which read as follows: “Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.”

Subsec. (c)(3)(B). Pub. L. 103-198, §5(2)(C)(ii), (iii), redesignated subpar. (D) as (B), substituted “copyright arbitration royalty panel appointed under chapter 8” for “Arbitration Panel” in introductory provisions, and struck out former subpar. (B) which provided for the selection of an Arbitration Panel.

Subsec. (c)(3)(C). Pub. L. 103-198, §5(2)(C)(ii), (v), redesignated subpar. (G) as (C), amended subpar. generally, substituting provisions relating to period during which decision of arbitration panel or order of Librarian of Congress becomes effective for provisions relating to period during which decision of Arbitration Panel or order of Copyright Royalty Tribunal became effective, and struck out former subpar. (C) which related to proceedings in arbitration.

Subsec. (c)(3)(D). Pub. L. 103-198, §5(2)(C)(vi), redesignated subpar. (H) as (D) and substituted “referred to in subparagraph (C)” for “adopted or ordered under subparagraph (F)”. Former subpar. (D) redesignated (B).

Subsec. (c)(3)(E) to (H). Pub. L. 103-198, §5(2)(C)(iv)-(vi)(I), struck out subpar. (E) which required the Arbitration Panel to report to the Copyright Royalty Tribunal not later than 60 days after publication of notice initiating an arbitration proceeding, struck out subpar. (F) which required action by the Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

Subsec. (c)(4). Pub. L. 103-198, §5(2)(D), struck out par. (4) which established procedures for judicial review of decisions of the Copyright Royalty Tribunal.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 13 of Pub. L. 105-80 provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section, sections 101, 104A, 108 to 110, 114 to 116, 303, 304, 405, 407, 411, 504, 509, 601, 708, 801 to 803, 909, 910, 1006, and 1007 of this title, and section 2319 of Title 18, Crimes and Criminal Procedure, and amending provisions set out as a note under section 914 of this title] shall take effect on the date of the enactment of this Act [Nov. 13, 1997].

“(b) SATELLITE HOME VIEWER ACT.—The amendments made by section 1 [amending this section] shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103-369).

“(c) TECHNICAL AMENDMENT.—The amendment made by section 12(b)(1) [amending provisions set out as a note under section 914 of this title] shall be effective as if enacted on November 9, 1987.”

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Section 6 of Pub. L. 103-369 provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (d), this Act [amending this section and section 111 of this title, enacting provisions set out as notes under this section and section 101 of this title, and repealing provisions set out as a note under this section] and the amendments made by this Act take effect on the date of the enactment of this Act [Oct. 18, 1994].

“(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

“(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.

“(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The amendment made by section 3(b) [amending section 111 of this title], relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.”

EFFECTIVE DATE

Section 206 of title II of Pub. L. 100-667 provided that: “This title and the amendments made by this title [enacting this section and sections 612 and 613 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under this section and section 101 of this title] take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act [Nov. 16, 1988].”

Section 207 of title II of Pub. L. 100-667 provided that this title and the amendments made by this title (other than the amendments made by section 205 [amending section 605 of Title 47]) cease to be effective on Dec. 31, 1994, prior to repeal by Pub. L. 103-369, §4(b), Oct. 18, 1994, 108 Stat. 3481.

TERMINATION OF SECTION

Section 4(a) of Pub. L. 103-369 provided that: “Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.”

APPLICABILITY OF 1994 AMENDMENT

Section 5 of Pub. L. 103-369 provided that: “The amendments made by this section apply only to section 119 of title 17, United States Code.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 111, 501, 511, 801, 802, 803 of this title; title 18 section 2319; title 47 sections 325, 548.

§ 120. Scope of exclusive rights in architectural works

(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

(Added Pub. L. 101-650, title VII, §704(a), Dec. 1, 1990, 104 Stat. 5133.)

EFFECTIVE DATE

Section applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101-650, set out as an Effective Date of 1990 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title; title 18 section 2319.

§ 121. Limitations on exclusive rights: reproduction for blind or other people with disabilities

(a) Notwithstanding the provisions of sections 106 and 710, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

(b)(1) Copies or phonorecords to which this section applies shall—

(A) not be reproduced or distributed in a format other than a specialized format exclusively for use by blind or other persons with disabilities;

(B) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) For purposes of this section, the term—

(1) “authorized entity” means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(2) “blind or other persons with disabilities” means individuals who are eligible or who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind”, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats; and

(3) “specialized formats” means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.

(Added Pub. L. 104-197, title III, §316(a), Sept. 16, 1996, 110 Stat. 2416.)

REFERENCES IN TEXT

The Act approved March 3, 1931, referred to in subsec. (c)(2), is act Mar. 3, 1931, ch. 400, 46 Stat. 1487, as amended, which is classified generally to sections 135a and 135b of Title 2, The Congress. For complete classification of this Act to the Code, see Tables.

CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

Sec.	
201.	Ownership of copyright.
202.	Ownership of copyright as distinct from ownership of material object.
203.	Termination of transfers and licenses granted by the author.
204.	Execution of transfers of copyright ownership.
205.	Recordation of transfers and other documents.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 201. Ownership of copyright

(a) INITIAL OWNERSHIP.—Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) WORKS MADE FOR HIRE.—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) CONTRIBUTIONS TO COLLECTIVE WORKS.—Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) TRANSFER OF OWNERSHIP.—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.